

MONTANA LEGISLATIVE HISTORY

Chapter 300 19 67

Bill H 383 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Jan 20 ✓ C

Jan 23 ✓ C

Jan 24 ✓ C

_____ C

Date Out Jan 24 ✓ C

S. Committee on Judiciary

Hearing Date(s) Feb 21 ✓ C

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Feb 21 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

JUDICIARY COMMITTEE
January 20, 1967

The House Judiciary Committee met January 20, 1967, in joint meeting with the Senate Judiciary Committee in the law library immediately upon adjournment. Presiding was Senator Dussault, Chairman of the Senate Judiciary Committee.

All members were present except Representatives Harrison, Stratton, Hall, Prevost, Sullivan.

The proposed bills on the Montana Business Corporation Act were considered, and speaking as proponents of the bills were:

Dean Robert Sullivan, University of Montana

Law School, Missoula, Montana

Michael J. Hughes, Attorney at Law,

Helena, Montana

Ward A. Shanahan, Attorney at Law,

Helena, Montana

William Coldiron, Attorney at Law, Butte, Montana

They were all members of the committee studying the proposed changes in the law as asked for by a resolution passed by the 1963 Legislature. The 1965 Legislature asked for the continued existence of the committee, and they now have the proposed bills ready for the consideration of this session of the Legislature.

There was discussion as to whether these should be Senate or House bills, and the general consensus was that they should be House bills, whereupon Representative Boughton moved that the Montana Business Corporation Act, the Montana Nonprofit Corporation Act and the Montana Religious Corporation Sole Act be introduced as House Judiciary Committee bills. The motion carried unanimously.

There being no further business, the meeting adjourned.



W. S. MATHER, CHAIRMAN

Media part of minutes

Public Law 87-569
87th Congress, H. R. 6967
August 6, 1962

of Jan. 20-67



An Act

76 STAT. 265.

To provide for the incorporation of certain nonprofit corporations in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known and may be cited as the "District of Columbia Nonprofit Corporation Act".

District of Columbia Nonprofit Corporation Act.

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DEFINITIONS

SEC. 2. As used in this Act, unless the context otherwise requires the term—

(a) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this Act, except a foreign corporation.

(b) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of the District of Columbia, for a purpose or purposes for which a corporation might be organized under this Act, but shall not include a corporation created by a special Act of Congress.

(c) "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers; except nothing in this Act shall be construed as prohibiting the payment of reasonable compensation for services rendered and the making of distribution upon dissolution of final liquidation as permitted in this Act.

(d) "Articles of incorporation" means the original articles of incorporation and all amendments thereto, including articles of merger or consolidation, and in the case of a corporation created by a special Act of Congress, means such special Act and any amendments thereto made by special Act of Congress, or pursuant to general law.

(e) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of a corporation irrespective of the name or names by which such rules are designated.

(f) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(g) "Board of directors" means the group of persons vested with the management of the affairs of a corporation irrespective of the name by which such group is designated.

(h) "Insolvent" means that a corporation is unable to pay its debts as they become due in the usual course of its affairs.

(i) "Commissioners" means the Commissioners of the District of Columbia or the agent or agents designated by them to perform any function vested in the Commissioners by this Act.

(j) "District" means the District of Columbia.

(k) "The court", except where otherwise specified, means the United States District Court for the District of Columbia.

APPLICABILITY

SEC. 3. (a) The provisions of this Act relating to domestic corporations shall apply to all corporations organized hereunder or which elect to accept the provisions of this Act.

(b) The provisions of this Act relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in the District of Columbia for a purpose or purposes for which a corporation might be organized under this Act.

(c) No corporation eligible to be formed under this Act shall be incorporated under any other Act or statute now in force in the District of Columbia except that those organizations eligible to be formed under the Acts or parts of Acts referred to in section 49-303, District of Columbia Code (1951 edition), may be formed under those Acts or parts of Acts. 32 Stat. 546.

PURPOSES

SEC. 4. Corporations may be organized under this Act for any lawful purpose or purposes including, but not limited to, one or more of the following or similar purposes: benevolent; charitable; religious; missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civic; professional, commercial, industrial, business, or trade association; mutual improvement; promotion of the arts; except that cooperative organizations or organizations subject to any of the provisions of the insurance laws of the District may not be organized under this Act.

GENERAL POWERS

SEC. 5. Each corporation shall have power—

(a) to have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(b) to sue and be sued, complain and defend, in its corporate name;

(c) to have a corporate seal which may be altered at pleasure and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(d) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;

(e) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(f) to lend money to and otherwise assist its employees other than its officers and directors;

(g) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, State, territory, governmental district, or municipality or of any instrumentality thereof;

(h) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income;

(i) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(j) to conduct its affairs, carry on its operations, hold property, and have offices and exercise the powers granted by this Act in any part of the world;

(k) to elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;

(l) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the District of Columbia, for the administration and regulation of the affairs of the corporation;

(m) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for religious, charitable, scientific research, or educational purposes, or for other purposes for which the corporation is organized;

(n) to indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, whether for profit or not for profit, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of a duty. Such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise;

(o) to cease its corporate activities and surrender its corporate franchise;

(p) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

SEC. 6. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(a) In a proceeding by a member or a director against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the act or transfer sought to be enjoined is being, or is to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or trustees of the corporation.

(c) In a proceeding by the Commissioners, as provided in this Act, to dissolve the corporation, or in a proceeding by the Commissioners to enjoin the corporation from the transaction of unauthorized acts.

CORPORATE NAME

SEC. 7. The corporate name—

(a) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(b) shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special Act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation whether for profit or not for profit authorized to transact business or conduct affairs in the District, or a name the exclusive right to which is at the time reserved in the manner provided in this Act or in accordance with the provisions of the District of Columbia Business Corporation Act;

(c) shall be transliterated into letters of the English alphabet, if it is not in English;

(d) shall not indicate, nor shall any statement be made, that the corporation is organized under an Act of Congress.

RESERVED NAME

SEC. 8. (a) The exclusive right to the use of a corporate name may be reserved by any person or corporation, domestic or foreign, by delivering to the Commissioners an application to reserve a specified corporate name, executed by the applicant. If the Commissioners find that the name is available for corporate use, they shall reserve the same for the exclusive use of the applicant for a period of sixty days.

68 Stat. 177.
D. C. Code
29-901.

Such reservation may be renewed for an additional period of sixty days and for good cause shown such reservation may be further extended for a reasonable period.

(b) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by delivering to the Commissioners a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

REGISTERED OFFICE AND REGISTERED AGENT

SEC. 9. Each corporation shall have and continuously maintain in the District of Columbia—

(a) a registered office, which may be, but need not be, the same as its principal office;

(b) a registered agent, which agent may be either an individual resident of the District of Columbia whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District of Columbia and having an office identical with such registered office.

CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT

SEC. 10. (a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioners a statement setting forth—

(1) the name of the corporation;

(2) the address, including street and number, if any, of its then registered office;

(3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) the name of its then registered agent;

(5) if its registered agent is to be changed, the name of its successor registered agent;

(6) that the address of its registered office and the address of the office of its registered agent as changed will be identical; and

(7) that such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

(b) Such statement shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by the secretary or an assistant secretary, and delivered to the Commissioners. If the Commissioners find that such statement conforms to law, they shall, when all fees and charges have been paid as in this Act prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) A corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a corporation may resign as such agent by delivering written notice thereof, executed in triplicate, to the Commissioners, who shall file one copy thereof in their office and forthwith mail a copy thereof to the corporation at its registered office and another copy to the corporation at its principal office in the District of Columbia as shown by the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or other charge of any kind shall be imposed with respect to a filing under this subsection.

REGISTERED AGENT AS AN AGENT FOR SERVICE

SEC. 11. (a) The registered agent appointed by a corporation as provided in this Act shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in the District or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Commissioners shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them or with any clerk having charge of their office duplicate copies of such process, notice, or demand. In the event that any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office.

(c) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with respect thereto.

(d) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

MEMBERS

SEC. 12. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein.

BYLAWS

SEC. 13. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws.

MEETINGS OF MEMBERS

SEC. 14. (a) Meetings of members may be held at such place within or without the District of Columbia as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

(b) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(c) Special meetings of the members may be called by the president, the secretary, the board of directors, or by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having at least one-twentieth of the votes entitled to be cast at such meeting.

NOTICE OF MEMBERS' MEETINGS

SEC. 15. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten or more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

VOTING

SEC. 16. (a) Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation.

(b) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where the articles of incorporation or the bylaws so provide, voting on all matters, including the election of directors or officers where they are to be elected by the members, may be conducted by mail.

(c) The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

(d) If a corporation has no members or if the members have no right to vote, the directors shall have the sole voting power and shall have all of the authority and may take any action herein permitted members.

QUORUM

SEC. 17. (a) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members having at least one-tenth of

the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Act, the articles of incorporation or the bylaws.

(b) Unless otherwise provided by the articles of incorporation or the bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(c) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

BOARD OF DIRECTORS

SEC. 18. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of the District of Columbia or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

NUMBER, ELECTION, CLASSIFICATION, AND REMOVAL OF DIRECTORS

SEC. 19. (a) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(b) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(c) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified, except in the case of ex officio directors.

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the bylaws, and if none be provided may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

VACANCIES

SEC. 20. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the then members of the board of directors, though less than a quorum of the board, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

QUORUM OF DIRECTORS

SEC. 21. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this Act or by the articles of incorporation or the bylaws.

COMMITTEES

SEC. 22. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each of which shall consist of two or more directors, which committees, to the extent provided in said resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law.

PLACE AND NOTICE OF DIRECTORS' MEETINGS

SEC. 23. Meetings of the board of directors, regular or special, may be held at such place within or without the District of Columbia, and upon such notice as may be prescribed in the bylaws or, where not inconsistent with the bylaws, by resolution of the board of directors. A director's attendance at any meeting shall constitute waiver of notice of such meeting, excepting such attendance at a meeting by a director for the purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless otherwise provided in the articles of incorporation or the bylaws.

OFFICERS

SEC. 24. (a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include one or more vice presidents and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(b) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or other organizations shall be ex officio members of the board of directors.

(c) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the bylaws.

(d) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

REMOVAL OF OFFICERS

SEC. 25. Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights.

BOOKS AND RECORDS

SEC. 26. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in the District of Columbia a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member having voting rights, or his agent or attorney, for any proper purpose at any reasonable time.

SHARES OF STOCK AND DIVIDENDS PROHIBITED

SEC. 27. A corporation shall not authorize or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation, including pensions, in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members or others as permitted by this Act.

LOANS TO DIRECTORS AND OFFICERS PROHIBITED

SEC. 28. No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such a loan, shall be

jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

INCORPORATORS

SEC. 29. Three or more natural persons of the age of twenty-one years or more may act as incorporators of a corporation by signing, verifying, and delivering in duplicate to the Commissioners articles of incorporation for such corporation.

ARTICLES OF INCORPORATION

SEC. 30. (a) The articles of incorporation shall set forth—

- (1) the name of the corporation;
- (2) the period of duration, which may be perpetual;
- (3) the purpose or purposes for which the corporation is organized;
- (4) if the corporation is to have no members, a statement to that effect;

(5) if the corporation is to have one or more classes of members, any provision which the incorporators elect to set forth in the articles of incorporation designating the class or classes of members, stating the qualifications and rights of the members of each class and conferring, limiting, or denying the right to vote;

(6) if the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or appointed; or that the manner of such election or appointment of such directors shall be provided in the bylaws;

(7) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation and any provision which under this Act is required or permitted to be set forth in the bylaws;

(8) the address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address;

(9) the number of directors constituting the initial board of directors, and the names and addresses, including street and number, if any, of the persons who are to serve as the initial directors until the first annual meeting or until their successors be elected and qualify;

(10) the name and address, including street and number, if any, of each incorporator.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

FILING OF ARTICLES OF INCORPORATION

SEC. 31. (a) Duplicate originals of the articles of incorporation shall be delivered to the Commissioners.

(b) If the Commissioners find that the articles of incorporation conform to law, they shall, when all fees and charges have been paid as in this Act prescribed—

(1) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of incorporation to which they shall affix the other duplicate original;

(4) deliver the certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto, to the incorporators or their representative.

EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION

SEC. 32. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except as against the District of Columbia in a proceeding to cancel or revoke the certificate of incorporation.

ORGANIZATION MEETINGS

SEC. 33. (a) After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held within the United States at the call of a majority of the directors so named for the purpose of adopting bylaws (unless the power to adopt bylaws has been reserved by the articles of incorporation to the members, in which event the bylaws shall be adopted by the members), electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting: *Provided, however*, That if all the directors shall waive notice in writing and fix a time and place for said organization meeting no notice shall be required of such meeting.

(b) A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least five days' notice, for such purposes as shall be stated in the notice of meeting.

RIGHT TO AMEND ARTICLES OF INCORPORATION

SEC. 34. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired: *Provided*, That its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment.

PROCEDURE TO AMEND ARTICLES OF INCORPORATION

SEC. 35. Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. If the meeting be an

annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting.

(c) The proposed amendment shall be adopted upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(e) Any number of amendments may be submitted and voted upon at any one meeting.

ARTICLES OF AMENDMENT

SEC. 36. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(a) the name of the corporation;

(b) the amendment so adopted;

(c) where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(d) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

FILING OF ARTICLES OF AMENDMENT

SEC. 37. (a) Duplicate originals of the articles of amendment shall be delivered to the Commissioners.

(b) If the Commissioners find that the articles of amendment conform to law, they shall, when all fees and charges have been paid as in this Act prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of amendment to which they shall affix the other duplicate original;

(4) deliver the certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto, to the corporation or its representative.

EFFECT OF CERTIFICATE OF AMENDMENT

SEC. 38. (a) Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(b) No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed

by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

PROCEDURE FOR MERGER

SEC. 39. Any two or more domestic corporations subject to the provisions of this Act may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth—

(a) the names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

PROCEDURE FOR CONSOLIDATION

SEC. 40. Any two or more domestic corporations subject to the provisions of this Act may consolidate into a new corporation in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth—

(a) the names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act;

(d) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

APPROVAL OF MERGER OR CONSOLIDATION

SEC. 41. A plan of merger or consolidation shall be approved in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members.

(c) At each such meeting, a vote of the members shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of direc-

tors of such corporation upon receiving the vote of a majority of the directors in office.

(e) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

ARTICLES OF MERGER OR CONSOLIDATION

SEC. 42. (a) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and the corporate seal of each such corporation shall be thereto affixed, attested by its secretary or an assistant secretary, and shall set forth—

(1) the plan of merger or the plan of consolidation;

(2) where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (a) a statement setting forth the date of the meeting of members at which the plan was approved, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or (b) a statement that such amendment was approved by a consent in writing signed by all members entitled to vote with respect thereto;

(3) where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was approved and a statement of the fact that such plan received the vote of a majority of the directors in office.

(b) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Commissioners.

(c) If the Commissioners find that such articles conform to law, they shall, when all fees and charges have been paid as in this Act prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of merger or a certificate of consolidation to which they shall affix the other duplicate original;

(4) deliver the certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto, to the surviving or new corporation, as the case may be, or its representative.

EFFECTIVE DATE OF THE MERGER OR CONSOLIDATION

SEC. 43. Upon the issuance of the certificate of merger, or the certificate of consolidation by the Commissioners, the merger or consolidation shall be effected.

EFFECT OF MERGER OR CONSOLIDATION

SEC. 44. When such merger or consolidation has been effected—

(a) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) such surviving or new corporation, as the case may be, shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act;

(d) such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property—real, personal, and mixed—and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or other property, or any interest therein, vested in any of such corporations shall not revert unless required by the terms of the gift, bequest, or devise, or be in any way impaired by reason of such merger or consolidation;

(e) such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation;

(f) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS

SEC. 45. One or more foreign corporations and one or more domestic corporations may be merged or consolidated if permitted by the laws of the State or country under which each such foreign corporation is organized.

(a) Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the State or country under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any State or country other than the District of Columbia, it shall comply with the provisions of this Act with respect to foreign corporations if it is to carry on its affairs in the District of Columbia, and in every case it shall deliver to the Commissioners, who shall file—

(1) an agreement that it may be served with process in the District of Columbia in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation;

(2) an irrevocable appointment of the Commissioners of the District of Columbia as its agent to accept service of process in any such proceeding; and

(3) a post office address to which the Commissioners may mail a copy of any service of process, notice, or demand against the corporation that may be served on them.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of the District of Columbia. If the surviving or new corporation is to be governed by the laws of any jurisdiction other than the District of Columbia, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other jurisdiction provide otherwise.

SALE, LEASE, EXCHANGE, OR MORTGAGE OF ASSETS

SEC. 46. A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting.

(b) Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Act for the giving of notice of meetings of members.

(c) At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the vote of at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(d) After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(e) Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

VOLUNTARY DISSOLUTION

SEC. 47. A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

DISTRIBUTION OF ASSETS

SEC. 48. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(a) All liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act.

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, as may be specified if a plan of distribution adopted as provided in this Act.

PLAN OF DISTRIBUTION

SEC. 49. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

(a) Where there are members having voting rights the board of directors shall adopt a resolution recommending a plan of distribution and directing that the plan be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS

SEC. 50. A corporation may, at any time prior to the issuance of a certificate of dissolution by the Commissioners, as hereinafter provided, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(c) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. If the articles of dissolution have been delivered to the Commissioners, notice of such revocation shall be given to them in writing.

ARTICLES OF DISSOLUTION

SEC. 51. If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation shall have been paid and discharged, or adequate provisions shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this Act, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed and attested by its secretary or an assistant secretary, and such statement shall set forth—

(a) the name of the corporation;

(b) where there are members having voting rights—

(1) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting, or

(2) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(d) that all debts, liabilities, and obligations of the corporation have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this Act;

(f) that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

FILING OF ARTICLES OF DISSOLUTION

SEC. 52. (a) Duplicate originals of such articles of dissolution shall be delivered to the Commissioners.

(b) If the Commissioners find that such articles of dissolution conform to law, they shall, when all fees and charges have been paid as in this Act prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of dissolution to which they shall affix the other duplicate original;

(4) deliver the certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto, to the representative of the dissolved corporation.

(c) Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Act.

INVOLUNTARY DISSOLUTION

SEC. 53. (a) A corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Commissioners in the name of the District of Columbia when it is made to appear to the court that—

- (1) the franchise of the corporation was procured through fraud; or
- (2) the corporation has continued to exceed or abuse the authority conferred upon it by this Act; or
- (3) the corporation has failed for ninety days to appoint and maintain a registered agent as provided in this Act; or
- (4) the corporation has failed for ninety days after change of its registered office or registered agent to deliver to the Commissioners a statement of such change.

(b) At least thirty days before any action for the involuntary dissolution of a corporation shall be filed by the Commissioners, they shall notify the corporation by certified or registered mail addressed to such corporation at its registered office a notice of their intention to file such suit and the reason therefor. If, before action is filed, the corporation as the case may be shall submit satisfactory evidence that said franchise was not procured through fraud or that the corporation has not exceeded or abused such authority or shall appoint or maintain a registered agent as provided in this Act, or deliver to the Commissioners the required statement of change of registered agent, the Commissioners shall not file an action against such corporation for such cause. If, after action is filed, for a reason stated in paragraph (3) or (4) of the preceding subsection the corporation shall as the case may be appoint or maintain a registered agent as provided in this Act, or shall deliver to the Commissioners the required statement of change of registered agent, and shall pay the costs of such action, the action for such cause shall abate.

VENUE AND PROCESS

SEC. 54. In every action for the involuntary dissolution of a corporation hereinbefore provided, summons shall issue and be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioners shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Commissioners shall cause a copy of such notice to be mailed by registered or certified mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioners of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioners, unless the decree is against the corporation and such cost is collected from it.

JURISDICTION OF COURT TO LIQUIDATE ASSETS AND AFFAIRS OF CORPORATION

SEC. 55. The United States District Court for the District of Columbia shall have full power to liquidate the assets and affairs of a corporation—

(a) in any action by a member or director when it is made to appear—

- (1) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or
- (2) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or
- (3) that the corporate assets are being misapplied or wasted; or
- (4) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor—

- (1) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or
- (2) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when an action has been commenced by the Commissioners to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(e) it shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT

SEC. 56. (a) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

(b) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(c) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct.

(d) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(e) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this Act, have exclusive jurisdiction of the corporation and its property, wherever situated.

QUALIFICATION OF RECEIVERS

SEC. 57. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in the District of Columbia, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS

SEC. 58. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be

given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

DISCONTINUANCE OF LIQUIDATION PROCEEDINGS

SEC. 59. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is made to appear that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

DECREE OF DISSOLUTION

SEC. 60. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this Act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

FILING OF DECREE OF DISSOLUTION

SEC. 61. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of the court to cause a certified copy of the decree to be delivered to the Commissioners, who shall file the same. No fee shall be charged by the Commissioners for the filing thereof.

DEPOSITS IN REGISTRY OF COURT

SEC. 62. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited in the registry of the court and shall be paid over to such person or to his legal representative upon proof satisfactory to the court of his right thereto. If any portion thereof remain in the registry after ten years from the date of deposit, it shall escheat to the District of Columbia and shall be paid into the Treasury of the United States for the credit of the said District.

SURVIVAL OF REMEDY AFTER DISSOLUTION

SEC. 63. The dissolution of a corporation or the expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing, or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within two years after the date of such dissolution. Any suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corpo-

ration was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

ADMISSION OF FOREIGN CORPORATION

SEC. 64. (a) A foreign corporation to which this Act is applicable shall procure a certificate of authority from the Commissioners before it conducts affairs in the District, but no foreign corporation shall be entitled to procure a certificate of authority under this Act to conduct in the District any affairs which a corporation organized under this Act is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of the District, and nothing in this Act contained shall be construed to authorize the District to regulate the organization or the internal affairs of such corporation.

(b) Without excluding other activities which may not constitute conducting affairs in the District of Columbia, a foreign corporation shall not be considered to be conducting affairs in the District for the purposes of this Act, by reason of conducting an isolated transaction completed in thirty days and not in the course of a number of repeated transactions of like nature or by reason of any one or more of the following activities in the District:

- (1) maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) creating evidences of debt, mortgages, or liens on real or personal property;
- (5) collecting its debts, taking security for the same, or enforcing any rights in property securing the same.

POWERS OF FOREIGN CORPORATION

SEC. 65. (a) No foreign corporation to which this Act is applicable shall conduct in the District any affairs which may not be conducted by a corporation organized under this Act.

(b) A foreign corporation which shall have received a certificate of authority under this Act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this Act, enjoy the same rights and privileges as, but no greater rights and privileges than, a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this Act otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

CORPORATE NAME OF FOREIGN CORPORATION

SEC. 66. No certificate of authority shall be issued to a foreign corporation—

- (a) which has a name the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, organized under any Act of Congress authorizing the formation of corporations under the laws of the District of Columbia or that of any corporation created pursuant to any spe-

cial Act of Congress to transact business or conduct affairs in the District, or that of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, or a name, the exclusive right to which is, at the time, reserved in the manner provided in this Act, or in accordance with the provisions of the District of Columbia Business Corporation Act;

- (b) unless the corporate name of such corporation is in English, or is transliterated into letters of the English alphabet if it is not in English.

68 Stat. 177.
D. C. Code
29-901.

CHANGE OF NAME BY FOREIGN CORPORATION

SEC. 67. Whenever a foreign corporation which is authorized to conduct affairs in the District of Columbia shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in the District until it has changed its name to a name which is available to it under the laws of the District.

APPLICATION FOR CERTIFICATE OF AUTHORITY

SEC. 68. A foreign corporation, in order to procure a certificate of authority to conduct affairs in the District of Columbia, shall make application therefor to the Commissioners, which application shall set forth—

- (a) the name of the corporation and the State or country under the laws of which it is incorporated;
- (b) the date of incorporation and the period of duration of the corporation;
- (c) the address, including street and number, if any, of the principal office of the corporation in the State or country under the laws of which it is incorporated;
- (d) the address, including street and number, if any, of the proposed registered office of the corporation in the District, and the name of its proposed registered agent in the District at such address;
- (e) a brief statement of the purposes it proposes to pursue in conducting its affairs in the District;
- (f) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;
- (g) such additional information as may be necessary or appropriate in order to enable the Commissioners to determine whether such corporation is entitled to a certificate to conduct affairs in the District.

Such application shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary.

FILING OF APPLICATION FOR CERTIFICATE OF AUTHORITY

SEC. 69. (a) There shall be delivered to the Commissioners—

- (1) duplicate originals of the application of the corporation for a certificate of authority;
- (2) a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the State or country under the laws of which it is incorporated.

(b) If the Commissioners find that such application conforms to law, they shall, when all fees and charges have been paid as in this Act prescribed—

- (1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (2) file in their office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto;
- (3) issue a certificate of authority to conduct affairs in the District to which they shall affix the other duplicate original application;
- (4) deliver the certificate of authority, together with the duplicate original of the application affixed thereto, to the corporation or its representative.

EFFECT OF CERTIFICATE OF AUTHORITY

SEC. 70. Upon the issuance of a certificate of authority by the Commissioners, the corporation shall have the right to conduct affairs in the District for those purposes set forth in its application, subject, however, to the right of the District to suspend or to revoke such authority as provided in this Act.

REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION

SEC. 71. Each foreign corporation authorized to conduct affairs in the District shall have and continuously maintain in the District—

- (a) a registered office which may be, but need not be, the same as its principal office in the District;
- (b) a registered agent, which agent may be either an individual resident in the District whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the District, having a business office identical with such registered office.

CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION

SEC. 72. (a) The registered office of a corporation or its registered agent, or both, may be changed by delivering to the Commissioners a statement setting forth—

- (1) the name of the corporation;
 - (2) the address, including street and number, if any, of its then registered office;
 - (3) if the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;
 - (4) the name of its then registered agent;
 - (5) if its registered agent is to be changed, the name of its successor registered agent;
 - (6) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical;
 - (7) that such change was authorized by resolution duly adopted by its board of directors, or was authorized by an officer of the corporation duly empowered to make such change.
- (b) Such statement shall be executed in duplicate by its president or vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and shall be delivered to the Commissioners. If the Commissioners find that such state-

ment conforms to law, they shall, when all fees and charges have been paid as in this Act prescribed—

- (1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in their office;
- (3) return the other duplicate original to the corporation or its representative.

(c) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the Commissioners.

(d) A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(e) Any registered agent of a foreign corporation may resign as such agent by delivering a written notice thereof, executed in duplicate, to the Commissioners who shall file one copy thereof in their office and forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated as the same appears in the records of the Commissioners. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Commissioners or upon the appointment of a successor agent becoming effective, whichever occurs sooner. No fee or charge of any kind shall be imposed with respect to a filing under this subsection.

SERVICE OF PROCESS ON FOREIGN CORPORATION

SEC. 73. (a) The registered agent so appointed by a foreign corporation authorized to conduct affairs in the District shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation, may be served. Service of any such process, notice, or demand upon a corporate agent, as such agent, may be had by delivering a copy of such process, notice, or demand to the president, vice president, the secretary, or an assistant secretary of such corporate agent.

(b) Whenever a foreign corporation authorized to conduct affairs in the District shall fail to appoint or maintain a registered agent in the District, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the Commissioners shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Commissioners of any such process, notice, or demand shall be made by delivering to and leaving with them, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Commissioners, they shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated, as the same appears in the records of the Commissioners.

(c) If any foreign corporation shall conduct affairs in the District without a certificate of authority, it shall by conducting such affairs be deemed to have thereby appointed the Commissioners its agent and representative upon whom any process, notice, or demand may be served. Service shall be made by delivery to and leaving with the Commissioners, or with any clerk having charge of their office, duplicate copies of such process, notice, or demand, together with an affi-

davit giving the latest known post office address of such corporation, and such service shall be sufficient if notice thereof and a copy of the process, notice, or demand are forwarded by registered or certified mail, addressed to such corporation at the address given in such affidavit.

(d) The Commissioners shall keep a record of all processes, notices, and demands served upon them under this section, and shall record therein the time of such service and their action with reference thereto.

(e) Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

AMENDMENT TO ARTICLES OF INCORPORATION OF FOREIGN CORPORATION

SEC. 74. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in the District are amended, such foreign corporation shall, within ninety days after such amendment becomes effective, file with the Commissioners a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in the District, nor authorize such corporation to conduct affairs in the District under any other name than the name set forth in its certificate of authority.

MERGER OF FOREIGN CORPORATION

SEC. 75. Whenever a foreign corporation authorized to conduct affairs in the District shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within ninety days after such merger becomes effective, deliver to the Commissioners a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in the District unless the name of such corporation be changed thereby or unless the corporation desires to pursue in the District other or additional purposes than those which it is then authorized to pursue in the District.

AMENDED CERTIFICATE OF AUTHORITY

SEC. 76. (a) A foreign corporation authorized to conduct affairs in the District shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in the District other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the Commissioners.

(b) The requirements in respect to the form and contents of such application, the manner of its execution, the delivering of duplicate originals thereof to the Commissioners, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

WITHDRAWAL OF FOREIGN CORPORATION

SEC. 77. (a) A foreign corporation authorized to conduct affairs in the District may withdraw from the District upon procuring from the Commissioners a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Commissioners an application for withdrawal.

(b) The application for withdrawal shall state—

(1) the name of the corporation and the state or country under the laws of which it is incorporated;

(2) that the corporation is not conducting affairs in the District;

(3) that the corporation surrenders its authority to conduct affairs in the District;

(4) that the corporation revokes the authority of its registered agent in the District to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in the District during the time the corporation was authorized to conduct affairs in the District may thereafter be made on such corporation by service thereof on the Commissioners;

(5) a post office address to which the Commissioners may mail a copy of any process against the corporation that may be served on them.

(c) The application for withdrawal shall be executed by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

FILING OF APPLICATION FOR WITHDRAWAL

SEC. 78. (a) Duplicate originals of such application for withdrawal shall be delivered to the Commissioners. If the Commissioners find that such application conforms to law, they shall, when all fees have been paid as in this Act prescribed—

(1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(2) file one of such duplicate originals in their office;

(3) issue a certificate of withdrawal to which they shall affix the other duplicate original;

(4) deliver the certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto, to the corporation or its representative.

(b) Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in the District shall cease.

REVOCATION OF CERTIFICATE OF AUTHORITY

SEC. 79. (a) The certificate of authority of a foreign corporation to conduct affairs in the District may be revoked by the Commissioners when they find that—

(1) the certificate of authority of the corporation was procured through fraud practiced upon the District; or

(2) the corporation has continued to exceed or has abused the authority conferred upon it by this Act; or

(3) the corporation has failed for a period of ninety days to pay any fees, charges, or penalties prescribed by this Act; or

(4) the corporation has failed for a period of ninety days to appoint and maintain a registered agent in the District; or

(5) the corporation has failed for ninety days after change of its registered office or registered agent to file with the Commissioners a statement of such changes; or

(6) the corporation for a period of two years has not conducted any affairs in the District; or

(7) the corporation has failed to file with the Commissioners a duly certified copy of each amendment to its articles of incorporation within ninety days after such amendment becomes effective; or

(8) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

(b) No certificate of authority of a foreign corporation shall be revoked by the Commissioners unless (1) they shall have given the corporation not less than thirty days' notice thereof by certified or registered mail addressed to such corporation at its principal office in the state or country under the laws of which such corporation is organized, as the same appears in the records of the Commissioners or at its registered office in the District, and (2) the corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or shall fail to appoint a registered agent in the District, or shall fail to file the required statement of change of registered office or registered agent, or shall fail to file a statement showing that it has conducted affairs in the District within a period of two years, or shall fail to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document.

ISSUANCE OF CERTIFICATE OF REVOCATION

SEC. 80. (a) Upon revoking any such certificate of authority, the Commissioners shall—

(1) issue a certificate of revocation in duplicate;

(2) file one of such certificates in their office;

(3) mail the other such certificate to such corporation at its registered office in the District or to its principal place of business as the same appears in the records of the Commissioners.

(b) Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in the District shall cease.

APPLICATION TO FOREIGN CORPORATIONS CONDUCTING AFFAIRS ON THE EFFECTIVE DATE OF THIS ACT

SEC. 81. Foreign corporations conducting affairs in the District at the time this Act takes effect for a purpose or purposes for which a certificate of authority is required under the provisions of this Act shall, within six months after the effective date of this Act, procure a certificate of authority and shall otherwise comply with all applicable provisions of this Act. Failure to secure a certificate of authority within the time provided in this section shall subject the corporation to all the penalties, liabilities, and restrictions provided in this Act for conducting affairs without a certificate of authority.

CONDUCTING AFFAIRS WITHOUT CERTIFICATE OF AUTHORITY

SEC. 82. (a) No foreign corporation which is conducting affairs in the District without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of the District until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of the District by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in the District, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(b) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in the District shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of the District.

(c) A foreign corporation which conducts affairs in the District without a certificate of authority shall be liable to the District for the years or parts thereof during which it conducted affairs in the District without a certificate of authority, in an amount equal to all fees, penalties, and other charges which would have been imposed by this Act upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in the District as required by this Act and thereafter filed all reports required by this Act; and, in addition thereto, it shall be liable for a penalty to be assessed by the Commissioners of not in excess of \$200. The Commissioners shall bring proceedings to recover all amounts due the District under the provisions of this section. Such charges and penalties shall be paid to the District before any certificate of authority is issued to such foreign corporation.

ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS

SEC. 83. (a) Each domestic corporation, and each foreign corporation authorized to conduct affairs in the District, shall prepare an annual report setting forth—

(1) the name of the corporation and the State or country under the laws of which it is incorporated;

(2) the address, including street and number, if any, of its registered office in the District, and the name of its registered agent at such address, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(3) a brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in the District;

(4) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(b) Such annual report shall be made on forms prescribed and furnished by the Commissioners, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, treasurer, or assistant treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

FILING OF ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS

SEC. 84. Such annual report of a domestic or foreign corporation shall be delivered to the Commissioners on or before the fifteenth day of April of each year, except that the first annual report of a domestic or foreign corporation shall be delivered to the Commissioners on or before the fifteenth day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the Commissioners. Proof to the satisfaction of the Commissioners that prior to the fifteenth day of April such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Commissioners find that such report conforms to law, they shall file the same. If they find that it does not so conform, they shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the Commissioners in sufficient time to be filed prior to the first day of July of the year in which it is due.

EFFECT OF FAILURE TO PAY ANNUAL REPORT FEE OR TO FILE ANNUAL REPORT

SEC. 85. If any corporation incorporated under this Act, or any corporation which has elected to accept this Act, or any foreign corporation having a certificate of authority issued under this Act, shall for two consecutive years fail or refuse to pay any annual report fee or fees payable under this Act, or fail or refuse to file any annual report as required by this Act for two consecutive years, then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative.

PROCLAMATION OF REVOCATION

SEC. 86. (a) On the second Monday in September of each year, the Commissioners shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any annual report fee or fees or failed or refused to file any annual report as required by this Act for two consecutive years next preceding June 30 in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

(b) The proclamation of the Commissioners shall be filed in their office and shall be published once during the month of September in each of two daily newspapers of general circulation in the District of Columbia.

(c) Upon publication of the proclamation of revocation as provided in this Act each domestic corporation listed in such proclamation shall be deemed to have been dissolved without further legal proceedings and each such corporation shall cease to carry on its business and shall, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, as in this Act provided with respect to dissolved corporations.

(d) All domestic corporations the articles of incorporation of which are revoked by proclamation or the term of existence of which expires by limitation set forth in its articles of incorporation shall nevertheless be continued for the term of three years from the date of such revocation or expiration bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to pay, satisfy, and discharge their liabilities and obligations and, after paying or adequately providing for the payment of all its obligations, to distribute the remainder of their assets, as in this Act provided with respect to dissolved corporations, but not for the purpose of continuing to conduct the affairs for which such corporation shall have been organized: *Provided, however,* That with respect to any action, suit, or proceeding begun or commenced by or against a corporation prior to such revocation or expiration and with respect to any action, suit, or proceeding begun or commenced by or against such corporation within three years after the date of such revocation or expiration, such corporation shall only for the purpose of such actions, suits, or proceedings so begun or commenced be continued a body corporate beyond said three-year period and until any judgments, orders, or decrees therein shall be fully executed.

PENALTY FOR CONDUCTING AFFAIRS AFTER ISSUANCE OF PROCLAMATION

SEC. 87. Any corporation, person, or persons who shall exercise or attempt to exercise any powers under articles of incorporation of a domestic corporation or under a certificate of authority of a foreign corporation which has been revoked shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment not exceeding one year, or both.

CORRECTION OF ERROR IN PROCLAMATION

SEC. 88. Whenever it is established to the satisfaction of the Commissioners that any corporation named in said proclamation has not failed or refused to pay any annual report fee or file any annual report for two consecutive years, or has been inadvertently included in the list of corporations as so failing or refusing to pay annual report fees or file reports, the Commissioners are authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, to good standing with like effect as if such proclamation of revocation, as to such corporation, had not been issued.

RESERVATION OF NAME OF PROCLAIMED CORPORATION

SEC. 89. The Commissioners shall reserve the names of all corporations the articles of incorporation of which have been revoked and of all foreign corporations the certificates of authority of which have been revoked until December 31 of the year in which the proclamation of revocation was issued and no domestic corporation shall be formed nor the name of any such domestic corporation changed to a name the same as or deceptively similar to such reserved name nor shall any foreign corporation be authorized to do business under a name the same as or deceptively similar to such reserved name.

REINSTATEMENT OF PROCLAIMED CORPORATIONS

SEC. 90. (a) A domestic corporation, the articles of incorporation of which have been revoked, may at any time after the date of the issuance of the proclamation of revocation deliver to the Commissioners a petition for reinstatement, in duplicate, accompanied by the delinquent annual report or reports, or payment of delinquent annual report fee or fees in full, or both, as the case may be, plus interest thereon as provided by this Act, together with any penalties imposed by this Act. The Commissioners, if they find that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for corporate use pursuant to the provisions of this Act, shall file them in their office and shall issue their certificate of reinstatement which shall have the effect of annulling the revocation proceedings theretofore taken as to such corporation and such corporation shall have such powers, rights, duties, and obligations as it had at the time of the issuance of the proclamation with the same force and effect as to such corporation as if the proclamation had not been issued.

(b) If the petition for reinstatement of a proclaimed corporation is delivered to the Commissioners after the period for reservation of the name has expired and if they find that the name is not available for corporate use pursuant to the provisions of this Act, then, in addition to complying with the provisions of the preceding paragraph the proclaimed corporation shall set forth in its petition for reinstatement its name at the time its articles of incorporation were proclaimed void and the new name by which the corporation will thereafter be known, which shall be a name available for corporate use pursuant to the provisions of this Act.

(c) A foreign corporation whose certificate of authority has been revoked shall, upon reentering the District, comply with all of the requirements of law applicable to an original application for a certificate of authority, including the payment of the filing fee for filing an application for a certificate of authority, but it need not file again a copy of its articles of incorporation or any amendment thereof that is then on file with the Commissioners. After the revocation of the certificate of authority of a foreign corporation, the Commissioners shall retain the articles of incorporation and amendments theretofore filed and the original application for a certificate of authority for a period of ten years.

PENALTIES IMPOSED UPON CORPORATIONS

SEC. 91. Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this Act shall be subject to a penalty of \$5 to be assessed by the Commissioners.

FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES

SEC. 92. The Commissioners shall charge and collect for—

- (a) filing articles of incorporation and issuing a certificate of incorporation, \$10;
- (b) filing articles of amendment and issuing a certificate of amendment, \$5;
- (c) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, \$5;
- (d) filing a statement of change of address or registered office or change of registered agent, or both, \$1;

- (e) filing articles of dissolution, \$1;
- (f) filing an application for reservation of a corporate name or for a renewal of reservation, \$5;
- (g) filing notice of transfer of a reserved corporate name, \$5;
- (h) filing statement of election to accept this Act and issuing certificate of acceptance, \$10;
- (i) filing an application of a foreign corporation for a certificate of authority to conduct affairs in the District and issuing a certificate of authority, \$10;
- (j) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in the District and issuing an amended certificate of authority, \$5;
- (k) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in the District, \$5;
- (l) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in the District, \$5;
- (m) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, \$1;
- (n) filing application for reinstatement of a domestic or foreign corporation and issuing certificate of reinstatement, \$10;
- (o) filing any other statement or report, including an annual report, of a domestic or foreign corporation, \$1;
- (p) indexing each document filed, except an annual report, \$2;
- (q) furnishing a certified copy of any document, instrument, or paper relating to a corporation, \$5;
- (r) furnishing a certificate as to the existence or nonexistence of a fact relating to a corporation, \$1;
- (s) The Commissioners are authorized to make regulations providing for reasonable fees for other services not listed in this section.

COMMISSIONERS: DUTIES AND FUNCTIONS

SEC. 93. (a) The Commissioners shall have the power and authority reasonably necessary to enable them to administer this Act efficiently and to perform the duties therein imposed upon them.

(b) The Commissioners shall be charged with the administration and enforcement of this Act. Said Commissioners are authorized to employ such personnel as may be necessary for the administration of this Act, within appropriations made by Congress. The compensation of such personnel shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended.

(c) The Commissioners may transfer any or all of the functions vested in them by this Act to any agent designated by them pursuant to law. It shall be the duty of any officer or agency of the government of the District of Columbia to perform any function delegated to such officer or agency by the Commissioners pursuant to this Act.

(d) Every certificate and other document or paper executed by the Commissioners, in pursuance of any authority conferred upon them by this Act, and sealed with the seal prescribed by subsection (c) of section 120 of the District of Columbia Business Corporation Act, and all copies of such papers, as well as of documents and other papers filed in accordance with the provisions of this Act, when certified by them and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceeding in any court and before a public officer, or official body.

(e) The Commissioners are authorized to make, modify, and enforce such regulations as they may deem necessary to carry out the provisions

63 Stat. 954,
5 USC 1071 n

68 Stat. 228,
D. C. Code
29-935.

of this Act, prescribe penalties for the violation of any such regulation not exceeding a fine of \$300 or imprisonment for ninety days, or both, and to prescribe such forms and procedures for use in the conduct of the business of any office or agency established by them as they may deem appropriate.

APPEAL FROM COMMISSIONERS

SEC. 94. (a) If the Commissioners shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Commissioners before the same shall be filed in their office, they shall, within ten days after the delivery thereof to them, give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the United States District Court for the District of Columbia by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(b) If the Commissioners shall revoke the certificate of authority to conduct affairs in the District of any foreign corporation, pursuant to the provisions of this Act, such foreign corporation may likewise appeal to the United States District Court for the District of Columbia by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in the District and a copy of the notice of revocation given by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the United States District Court for the District of Columbia under this section in review of any ruling or decision of the Commissioners may be taken as in other civil actions.

CERTIFICATES AND CERTIFIED COPIES TO BE RECEIVED IN EVIDENCE

SEC. 95. All certificates issued by the Commissioners in accordance with the provisions of this Act, and all copies of documents filed in their office in accordance with the provisions of this Act when certified by them, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the Commissioners under the seal of their office, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

FORMS TO BE FURNISHED BY COMMISSIONERS

SEC. 96. All reports required by this Act to be filed in the office of the Commissioners shall be made on forms which shall be prescribed and furnished by the Commissioners. Forms for all other documents to be filed in the office of the Commissioners shall be furnished by the Commissioners on request therefor, but the use thereof, unless otherwise specifically prescribed in this Act, shall not be mandatory.

GREATER VOTING REQUIREMENTS

SEC. 97. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

WAIVER OF NOTICE

SEC. 98. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Presence without objection also waives notice.

ACTION BY MEMBERS OR DIRECTORS WITHOUT A MEETING

SEC. 99. Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Commissioners under this Act.

UNAUTHORIZED ASSUMPTION OF CORPORATE POWERS

SEC. 100. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

PROCEDURE TO ELECT TO ACCEPT ACT

SEC. 101. Any corporation which is organized and existing under the laws of the District of Columbia or under any special Act of Congress on the date this Act takes effect, and which is organized not for profit, and is without authority to issue shares of stock, and is organized for a purpose or purposes for which a corporation may be organized under the provisions of this Act may elect to avail itself of the provisions of this Act in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation accept this Act and directing that the question of such acceptance be submitted to a vote at a meeting of the members having voting rights, which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposal to accept this Act shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposal to elect to accept this Act shall be adopted upon receiving at least two-thirds of the vote entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, the election to accept this Act may be adopted at a meeting of the board of directors upon receiving the vote of at least a majority of the directors in office.

STATEMENT OF ELECTION TO ACCEPT THIS ACT

SEC. 102. The statement of election to accept this Act shall be executed in duplicate by the corporation by its president or vice president, and the corporate seal shall be thereto affixed, attested by its secretary, or an assistant secretary, and shall set forth—

- (a) the name of the corporation;
- (b) a statement by the corporation that it has elected to accept this Act;
- (c) where there are members having voting rights—
 - (1) a statement setting forth the date of the meeting of the members at which the election to accept this Act was adopted; that a quorum was present at such meeting, and that such acceptance received the affirmative vote of at least two-thirds of the votes entitled to be cast by members present, or represented by proxy at such meeting, or
 - (2) a statement that such election to accept this Act was adopted by a consent, in writing, signed by all members entitled to vote with respect thereto;
- (d) where there are no members or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the election to accept this Act was adopted, and the statement of the fact that such acceptance received the vote of a majority of the directors in office;
- (e) the purpose or purposes (which may be different from its existing purposes) which it will thereafter pursue, and shall not include any purpose prohibited to a corporation organized under this Act;
- (f) if the corporation has no members, a statement to that effect;
- (g) if the corporation has members, there shall be set forth—
 - (1) the number of classes of members;
 - (2) if there is more than one class of members, a statement of the qualifications and rights and limitations of each class of members;
 - (3) if members, or any class or classes of members, are not entitled to vote, a statement to that effect;
 - (4) if members, or any class or classes of members are entitled to vote, a statement setting forth the voting rights and of any limitation or limitations thereof of members or of any class or classes thereof;
- (h) any other provision, not inconsistent with law, or this Act, for the regulation of the internal affairs of the corporation;
- (i) the address, including street and number, if any, of its registered office in the District of Columbia and the name of its registered agent at such address;
- (j) the names and respective addresses, including street and number, if any, of its officers and directors;
- (k) it shall not be necessary to set forth in the statement of election to accept this Act any of the corporate purposes enumerated in this Act. Whenever a provision in the statement of election to accept this Act is inconsistent with a bylaw, the provision of the statement of election to accept this Act shall be controlling.

FILING OF STATEMENT OF ELECTION TO ACCEPT THIS ACT

SEC. 103. (a) Duplicate originals of the statement of election to accept this Act shall be delivered to the Commissioners.

(b) If the Commissioners find that the statement of election to accept this Act conforms to law, they shall, when all fees and charges have been paid as in this Act prescribed—

- (1) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (2) file one of such duplicate originals in their office;
- (3) issue a certificate of acceptance, to which they shall affix the other duplicate original;
- (4) deliver such certificate of acceptance with the other duplicate original affixed thereto to the corporation or its representative.

EFFECT OF CERTIFICATE OF ACCEPTANCE

SEC. 104. (a) Upon the issuance of a certificate of acceptance as hereinbefore provided, the election of the corporation to accept this Act shall become effective and the existence of the corporation shall be continued under this Act and such certificate shall be conclusive evidence that all conditions precedent required to be performed under this Act have been complied with and that the corporation has elected to accept the provisions of this Act and the corporation shall be entitled to and be possessed of all of the privileges and powers and franchises and be subject to all of the provisions of this Act as fully and to the same extent as if such corporation had been originally incorporated under this Act; and all privileges, franchises, and powers theretofore belonging to said corporation and all property, real, personal, and mixed, and all debts due on whatever account, and all choses in action, and all and every other interest of or belonging to or due such corporation shall be and the same are hereby ratified, approved and confirmed and assured to such corporation with like effect and to all intents and purposes as if the same had been originally acquired through incorporation under this Act; but no contract, debt, claim, duty, liability, or obligation of any corporation to which a certificate of acceptance has been issued shall be affected or impaired in any way nor shall the rights of creditors or any liens upon the property of such corporation be affected or impaired by such election to accept this Act.

(b) Neither the issuance of a certificate of acceptance to a corporation created under the provisions of a special Act of Congress, nor the adoption of any amendment pursuant to this Act, shall release or terminate any duty or obligation expressly imposed upon any such corporation under and by virtue of the special Act of Congress under which it was created or any amendment made thereto, nor enlarge any right, power, or privilege granted any such corporation by such special Act except to the extent that such right, power, or privilege might have been included in the articles of incorporation of a corporation organized under this Act.

ACTIONS TO BE IN NAME OF DISTRICT OF COLUMBIA

SEC. 105. All civil actions under this Act which the Commissioners are authorized to commence, and all prosecutions for violations of the provisions of this Act or of regulations promulgated under the authority of this Act, shall be brought in the name of the District of Columbia by the Corporation Counsel of the District of Columbia. As used in this Act the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Commissioners to perform the functions prescribed for the Corporation Counsel in this Act.

August 6, 1962

RIGHT OF REPEAL RESERVED

SEC. 106. Congress reserves the right to alter, amend, or repeal this Act, or any part thereof, or any certificate of incorporation or certificate of authority issued pursuant to its provisions.

ACT NOT TO AFFECT INTERNAL REVENUE CODE OF 1954

SEC. 107. Nothing in this Act shall be construed as repealing or affecting any provision of the Internal Revenue Code of 1954.

26 USC 1 et seq.

EFFECT OF INVALIDITY OF PART OF THIS ACT

SEC. 108. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this Act so adjudged to be invalid or unconstitutional.

EFFECT OF FALSE STATEMENT

SEC. 109. A person who signs any instrument delivered to the Commissioners pursuant to this Act, knowing it to contain a misstatement of fact, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment for not exceeding one year, or by both such fine and imprisonment.

EFFECTIVE DATE

SEC. 110. This Act shall take effect one hundred and eighty days after the date of its approval.

APPROPRIATION OF FUNDS

SEC. 111. There are hereby authorized to be appropriated from any moneys in the Treasury of the United States to the credit of the District of Columbia, such amounts as may be necessary to carry into effect the provisions of this Act.

Approved August 6, 1962.

Mr. Stratton moved that HB 229 DO NOT PASS. The motion carried.

Tuesday, the 24th, the following bills will be considered:

193, 197, 293, 294, 383, 384, 386, and 433.

HB 349 will be considered Saturday since there weren't copies available today.

There being no further business, the meeting was adjourned.



W. S. MATHER, Chairman

Also attached hereto is an Association Support Agreement form provided by Mr. Pirrie.

JUDICIARY COMMITTEE
January 24, 1967

The House Judiciary Committee met January 24, 1967, upon adjournment. Chairman Mather presided. All members were present except Reps. McCulloch, Hall, Prevost and Sullivan, who were excused.

Mr. Wallander moved that HB 178 DO NOT PASS. The motion carried unanimously.

House Bills 193 and 197, the fee bill for district & Supreme Court and Judges Retirement Bill, were heard.

Appearing as proponents were:

Patrick F. Hooks, representing Citizen's Conference
Judicial System, who is an attorney from
Townsend, Montana
F. E. Young, Helena, Montana, actuary

House Bills 293 and 294, the Turf Bill and the DePuy Bill, were heard.

Appearing as proponents were:

Arnold A. Berger, Attorney, Billings, Montana
James J. Sinclair, Attorney, Billings, Montana

Mr. Berger offered a memo which he asked to have attached to today's minutes and made a part hereof.

Representative Murphy discussed HB 433 as chief sponsor. It is a bill authorizing the Supreme Court to supervise publication, etc. of the Montana Codes. Mr. Murphy moved that the bill be amended so that the act would be in full force and effect upon its passage and approval. The motion carried. Mr. Murphy moved that HB 433 DO PASS, AS AMENDED. The motion carried unanimously.

Rep. Boughton moved that HBs 293 and 294 DO NOT PASS. The motion carried.

HB 275, the criminal investigator bill, was again discussed. Mr. Goan moved that it Do Not Pass. Mr. Murphy made a substitute motion that HB 275 be passed for the day and that the Attorney General be invited to appear before our committee concerning the bill. A roll call vote was taken, and the motion carried 7 to 5. The Secretary was instructed to ask the Attorney General whether he wished to appear before our committee tomorrow on adjournment.

Rep. Goan moved that HBs 383, 384 and 386, the Montana Business Corporation Act, the Religious Corporation Sole Act, and the Non-profit Corporation Act, be amended to make the laws effective July 1, 1968. The motion carried unanimously. Rep. Goan moved that HBs 383, 384 and 386 DO PASS, AS AMENDED. The motion carried unanimously.

After the committee considered House Bill No. 485, it was moved by Senator Turnage, seconded by Senator Haughey, that House Bill No. 485 be not concurred in. The motion was carried.

After consideration of House Bill No. 200, Senator Turnage made a motion, seconded by Senator McGowan, that House Bill No. 200 be not concurred in. The motion was carried.

After considering House Bill No. 491, it was moved by Senator Haughey, seconded by Senator Turnage, that House Bill No. 491 be not concurred in. The motion was carried.

Amendments were proposed for House Bills 383, 384 and 386. It was agreed upon by the committee to change the effective date of these three bills from July 1, 1968 to December 13, 1968. After considering House Bill No. 383, Senator Turnage made a motion, seconded by Senator Haughey, that the amendments be adopted. The motion was carried. Senator Turnage moved, seconded by Senator Haughey, that House Bill No. 383, as amended, be concurred in. The motion was carried.

After considering the amendment to House Bill No. 384, it was moved by Senator Turnage, seconded by Senator Haughey, that the amendments be adopted. The motion was carried. Senator Hibbs moved, seconded by Senator Dzivi, that House Bill No. 384, as amended, be concurred in. The motion was carried.

Senator McGowan made a motion, seconded by Senator Rasmussen, that the amendments to House Bill No. 386 be adopted. The motion was carried. Senator McGowan then moved, seconded by Senator Rasmussen, that House Bill No. 386, as amended, be concurred in. The motion was carried.

After consideration of House Joint Resolution No. 12, it was moved by Senator Gilfeather, seconded by Senator Haughey, that House Joint Resolution No. 12 be not concurred in. The motion was carried.

After considering the proposed amendments on House Bill No. 195, Senator Dzivi made a motion, seconded by Senator Hibbs, that the amendments be adopted. The motion was carried. Senator Hibbs moved, seconded by Senator Dzivi, that House Bill No. 195, as amended, be concurred in. The motion was carried.

After consideration of House Bill No. 218, it was moved by Senator Haughey, seconded by Senator Dzivi, that House Bill No. 218 be concurred in. The motion was carried.

his person that of such guardian; provided that the court appointing such guardian shall certify that the primary purpose of such appointment is not to qualify such minor as a resident of this state; or if one parent has custody of the minor that of such parent.

(2) The domicile of a married woman is normally that of her husband; *provided, however, that a resident woman student who marries a nonresident does not by that fact alone lose her resident status for tuition and fee purposes for a period of four (4) years after said marriage.*

(3) A person does not gain or lose resident status by reason of his presence in any state or country while a member of the armed forces of the United States; provided, that a member of the armed forces may obtain resident status for himself, his spouse, or his children, after living in Montana for one year, and complying with the provisions of this act.

(4) The establishment of a new domicile in Montana by a qualified person formerly domiciled in another state has occurred if he is physically present in Montana without a present intention to return to such other state or to acquire a domicile at some other place outside of Montana.

(5) Once established a domicile has not been lost by mere absence unaccompanied by intention to establish a new domicile.

(6) *Any graduate of a Montana high school who shall apply for admittance to a unit of the Montana university system within one (1) year after his or her graduation and whose parent or parents, having custody of such graduate, has or have resided in the state of Montana in at least one (1) of the two (2) years immediately preceding such graduate's graduation from a Montana high school, shall be presumed to be a resident student for such time as he or she attends any unit of the university system during the regular school year for the next four (4) consecutive years or until his or her parent or parents, having custody, have established such residence in another state as will classify such student as a resident student of the latter state."*

Approved: March 2, 1967.

CHAPTER 300

An Act for the Codification and General Revision of the Laws of Montana, Relating to Business Corporations for Profit; Amending Sections 25-102 and 93-4401, R.C.M. 1947, and Repealing Sections 15-101, 15-102, 15-103, 15-104, 15-105, 15-106, 15-107, 15-108, 15-109, 15-110, 15-111, 15-112, 15-113, 15-114, 15-115, 15-116, 15-117, 15-118, 15-121, 15-201, 15-202, 15-203, 15-204, 15-205, 15-206, 15-207, 15-208, 15-209, 15-210, 15-211, 15-212, 15-213, 15-214, 15-215, 15-216, 15-217, 15-218, 15-219, 15-220, 15-221, 15-222, 15-223, 15-224, 15-225, 15-301, 15-302, 15-303, 15-401, 15-402, 15-403, 15-404, 15-405, 15-406, 15-407, 15-408, 15-409, 15-410, 15-411, 15-412, 15-501, 15-502, 15-503, 15-504, 15-505, 15-506, 15-507, 15-508, 15-509, 15-601, 15-602, 15-604, 15-606, 15-607, 15-608, 15-609, 15-610, 15-611, 15-612, 15-613, 15-614, 15-615, 15-616, 15-617, 15-618, 15-619, 15-620, 15-621, 15-622, 15-623, 15-624, 15-625, 15-626, 15-627, 15-701, 15-702, 15-703, 15-704, 15-705, 15-706, 15-707, 15-708, 15-709, 15-710, 15-711, 15-712, 15-713, 15-714, 15-715, 15-716, 15-717, 15-718, 15-719, 15-720, 15-721, 15-801, 15-802, 15-803, 15-804, 15-805, 15-806, 15-807, 15-808, 15-809, 15-810, 15-811, 15-901, 15-902, 15-903, 15-904, 15-905, 15-906, 15-907, 15-908, 15-909, 15-910, 15-911, 15-912, 15-913, 15-1001, 15-1002, 15-1101, 15-1102, 15-1103, 15-1104, 15-1105, 15-1106, 15-1107, 15-1108, 15-1109, 15-1110, 15-1111, 15-1112, 15-1113, 15-1114, 15-1115, 15-1116, 15-1117, 15-1118, 15-1119, 15-1120, 15-1121, 15-1122, 15-1123, 15-1124, 15-1125, 15-1126, 15-1127, 15-1128, 15-1129, 15-1130, 15-1131, 15-1201, 15-1202, 15-1601, 15-1602, 15-1603, 15-1701, 15-1702, 15-1703, 15-1704, 15-1705, 15-1706, 15-1707, 15-1708, 15-1709, 15-1710, 15-1711, 15-1712, 15-1713, 15-1801, 15-1802, 15-1803, 15-1804, 15-1805, 15-1806, 15-1807, 15-1901, 15-1902, 15-1903, 15-1904, 15-1905, 15-1906, 15-1907, 15-1908, 25-103, 25-104, 25-105, 25-106, 25-107, 25-108, 25-109, and 93-4342 R.C.M. 1947; and Providing an Effective Date.

It is the intent of the legislative assembly that this bill be codified as one chapter of title 15, Revised Codes of Montana, 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Short title.** This act shall be known and may be cited as the "Montana Business Corporation Act."

"Montana
Business
Corporation
Act."

Definitions.	Section 2. Definitions. As used in this act, unless the context otherwise requires, the term:
"Corporation" or "domestic corporation."	(a) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this act, except a foreign corporation.
"Foreign corporation."	(b) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this act.
"Articles of incorporation."	(c) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.
"Shares."	(d) "Shares" means the units into which the proprietary interests in a corporation are divided.
"Subscriber."	(e) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.
"Shareholder."	(f) "Shareholder" means one who is a holder of record of shares in a corporation.
"Authorized shares."	(g) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.
"Treasury shares."	(h) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.
"Net assets."	(i) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.
"Stated capital."	(j) "Stated capital" means, at any particular time, (1) the sum of the par value of all shares of the corporation having a par value that have been issued, (2) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the con-

sideration therefor as may have been allocated to capital surplus in a manner permitted by law, and

(3) such amounts not included in clauses (1) and (2) of this paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees, franchise taxes and other charges imposed by this act.

(k) "Surplus" means the excess of the net assets of a corporation over its stated capital. "Surplus."

(l) "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign. "Earned surplus."

(m) "Capital surplus" means the entire surplus of a corporation other than its earned surplus. "Capital surplus."

(n) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business. "Insolvent."

(o) "Filed" with the secretary of state shall be deemed to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. Such finding shall relate back to the time of receipt, but receipt by the secretary of state shall not of itself constitute "filing" under this act. "Filed."

Section 3. **Purposes.** Corporations may be organized under this act for any lawful purpose or purposes, except for the purpose of banking or insurance. Purposes.

General powers.

Section 4. **General powers.** Each corporation shall have power:

(a) To have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(b) To sue and be sued, complain and defend, in its corporate name.

(c) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(d) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain.

(e) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(f) To lend money to, to guarantee the obligations of and to otherwise assist its employees and, upon the affirmative vote of the holders of a majority of the outstanding shares of the corporation which are entitled to vote for directors, to lend money to, to guarantee the obligations of and to otherwise assist its directors and officers, but no loans shall be made by a corporation secured by its shares.

(g) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(h) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by

mortgage or pledge of all or any of its property, franchises and income.

(i) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(j) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this act in any state, territory, district, or possession of the United States, or in any foreign country.

(k) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(l) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(m) To make donations for the public welfare or for charitable, religious, scientific or educational purposes, and in time of war to make donations in aid of war activities.

(n) In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

(o) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against claims, liabilities, expenses and costs necessarily incurred by him in connection with the defense, compromise or settlement of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the shareholders after notice.

(p) To pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing

plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers and employees.

(q) To cease its corporate activities and surrender its corporate franchise.

(r) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

Right of
corporation
to acquire and
dispose of its
own shares.

Section 5. Right of corporation to acquire and dispose of its own shares. A corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least two-thirds (2/3) of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefor.

To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

- (a) Eliminating fractional shares.
- (b) Collecting or compromising indebtedness to the corporation.
- (c) Paying dissenting shareholders entitled to payment for their shares under the provisions of this act.
- (d) Effecting, subject to the other provisions of this act, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

Section 6. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

Defense of
ultra vires.

(a) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(b) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(c) In a proceeding by the attorney general, as provided in this act, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

Section 7. Corporate name. The corporate name:

Corporate name.

(a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(b) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the ex-

clusive right to which is, at the time, reserved in the manner provided in this act, or the name of a corporation which has in effect a registration of its corporate name as provided in this act.

Reserved name.

Section 8. **Reserved name.** The exclusive right to the use of a corporate name may be reserved by:

(a) Any person intending to organize a corporation under this act.

(b) Any domestic corporation intending to change its name.

(c) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(d) Any foreign corporation authorized to transact business in this state and intending to change its name.

(e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred twenty (120) days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

Registered name.

Section 9. **Registered name.** Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this act, provided its corporate name is not the same, as or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this act.

Such registration shall be made by:

(a) Filing with the secretary of state

(1) an application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged, and

(2) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations.

(b) Paying to the secretary of state a registration fee in the amount of one dollar (\$1) for each month, or fraction thereof, between the date of filing such application and December 31 of the calendar year in which such application is filed.

Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

Section 10. **Renewal of registered name.** A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars (\$10). A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

Renewal of
registered name.

Section 11. **Registered office and registered agent.** Each corporation shall have and continuously maintain in this state:

Registered office
and
registered agent.

(a) A registered office which may be, but need not be, the same as its place of business.

(b) A registered agent, which agent may be either an individual resident in this state whose business office

is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

Change of
registered office
or
registered agent.

Section 12. **Change of registered office or registered agent.** A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

- (a) The name of the corporation.
- (b) The address of its then registered office.
- (c) If the address of its registered office be changed, the address to which the registered office is to be changed.
- (d) The name of its then registered agent.
- (e) If its registered agent be changed, the name of its successor registered agent.
- (f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
- (g) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed for the corporation by any officer thereof, verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this act, he shall, when all fees have been paid as in this act prescribed, file such statement in his office, and upon filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes his or its business address to another place within the same country, he or it may

change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (e) or (g) and must recite that a copy of the statement has been mailed to each such corporation.

Section 13. **Service of process upon corporation.** Service of process upon a corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

Service of process
upon corporation.

Section 14. **Authorized shares.** Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this act or the constitution of Montana.

Authorized shares.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

- (a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.
- (b) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.
- (c) Having preference over any other class or classes of shares as to the payment of dividends.
- (d) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.
- (e) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into

shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

(f) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures or other obligations convertible into shares of any class, in the amounts and on such terms and conditions as may be provided by resolutions of the board of directors.

Issuance of shares
of preferred or
special classes
in series.

Section 15. Issuance of shares of preferred or special classes in series. If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

A. The rate of dividend.

B. Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption.

C. The amount payable upon shares in event of voluntary and involuntary liquidation.

D. Sinking fund provisions, if any, for the redemption or purchase of shares.

E. The terms and conditions, if any, on which shares may be converted.

If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations

set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) The name of the corporation.

(b) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.

(c) The date of adoption of such resolution.

(d) That such resolution was duly adopted by the board of directors.

Such statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day, and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

Subscriptions
for shares.

Section 16. **Subscriptions for shares.** A subscription for shares of a corporation to be organized shall be irrevocable for a period of six (6) months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty (20) days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

Consideration
for shares.

Section 17. **Consideration for shares.** Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be

received for such shares by a vote of the holders of a majority of all shares entitled to vote thereon.

Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

In the event of a conversion of shares, or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value, whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be (1) the stated capital then represented by the shares so exchanged or converted, and (2) that part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and (3) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

Section 18. **Payment for shares; stock rights and options.** The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

Payment for
shares; stock
rights and
options.

Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or

options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders and set forth or incorporated by reference in the instrument evidencing each such right or option. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

Determination of
amount of
stated capital.

Section 19. Determination of amount of stated capital. In case of the issuance by a corporation of shares having par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any of such consideration shall constitute capital surplus.

In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty (60) days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this act of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

Section 20. Expenses of organization, reorganization and financing. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

Expenses of
organization,
reorganization
and financing.

Section 21. Certificates representing shares. The shares of a corporation shall be represented by certificates signed by the president or a vice-president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice-president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

Certificates
representing
shares.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

(a) That the corporation is organized under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid.

Issuance of
fractional shares
or scrip.

Section 22. Issuance of fractional shares or scrip. A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may issue in lieu thereof scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full

shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable.

Section 23. Liability of subscribers and shareholders. A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Liability of
subscribers and
shareholders.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Section 24. Shareholders' pre-emptive rights. The shareholders of a corporation shall have no pre-emptive right to acquire unissued or treasury shares of the corporation, or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation.

Shareholders'
pre-emptive rights.

Section 25. Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Bylaws.

Section 26. Meetings of shareholders. Meetings of shareholders may be held at such place, either within or

Meetings of
shareholders.

without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-fourth ($\frac{1}{4}$) of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

Section 27. Notice of shareholders' meetings. Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

Section 28. Closing of transfer books and fixing record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty (50) days and,

Notice of
shareholders'
meetings.

Closing of transfer
books and fixing
record date.

in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 29. Voting list. The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

Voting list.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

Section 30. Quorum of shareholders. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third ($\frac{1}{3}$) of the shares entitled to vote at the meeting. The shareholders present at a duly-organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

Quorum of
shareholders.

If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this act or the articles of incorporation or bylaws.

If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

Voting of shares.

Section 31. Voting of shares. Each outstanding share, regardless of class, shall be entitled to one (1) vote, and each fractional share shall be entitled to a corresponding fractional vote, on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this act.

Neither treasury shares nor shares of its own stock held by the corporation in a fiduciary capacity, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent

or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provisions, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

Section 32. Voting trust. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten (10) years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination

Voting trust.

by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

Board of directors.

Section 33. **Board of directors.** The business and affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

Number and election of directors.

Section 34. **Number and election of directors.** The number of directors of a corporation shall be not less than three (3). Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this act. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

Classification of directors.

Section 35. **Classification of directors.** When the board of directors shall consist of nine (9) or more members, in lieu of electing the whole number of directors annually, the articles of incorporation or the bylaws may provide that the directors be divided into either two (2)

or three (3) classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

Section 36. **Vacancies; removal of directors.** Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

Vacancies; removal of directors.

At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

Section 37. **Quorum of directors.** A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the

Quorum of directors.

number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

Executive and
other committees.

Section 38. **Executive and other committees.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange, or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

Place and notice
of directors'
meetings.

Section 39. **Place and notice of directors' meetings.** Meetings of the board of directors, regular or special, may be held either within or without this state.

Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the

notice or waiver of notice of such meeting unless required by the bylaws.

Section 40. **Dividends.** The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

Dividends.

(a) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, or out of the unreserved and unrestricted net earnings of the current fiscal year and the next preceding fiscal year taken as a single period; provided, however, that if the stated capital of the corporation shall have been diminished by depreciation in the value of its property, or by losses, or otherwise, to an amount less than the aggregate amount of the stated capital represented by the issued and outstanding stock of all classes having a preference upon distribution of assets, such a dividend shall not be declared.

(b) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same; provided, however, that no such dividend shall be paid to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(c) Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation.

(d) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and

unrestricted surplus of the corporation upon the following conditions:

(1) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend.

(2) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(c) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

Distributions from
capital surplus.

Section 41. Distributions from capital surplus. The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(a) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether

or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(c) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

Section 42. Liability of directors in certain cases. In addition to any other liabilities imposed by law upon directors of a corporation:

Liability of
directors in
certain cases.

(a) Directors of a corporation, who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this act or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this act or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this act shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this act.

(c) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

(d) The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of any loan secured by shares of the corporation, except as authorized by other provisions of this act, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subparagraphs (a), (b) or (c) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corpora-

tion, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

Any director, against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this act, in proportion to the amounts received by them respectively.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

Section 43. Provisions relating to actions by shareholders. No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

Provisions relating to actions by shareholders.

In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares, of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

Section 44. Officers. The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may

Officers.

be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

Removal
of officers.

Section 45. **Removal of officers.** Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Books and
records.

Section 46. **Books and records.** Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

Any person who shall have been a shareholder of record for at least six (6) months immediately preceding his demand or who shall be the holder of record of at least five percent (5%) of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of shareholders and to make extracts therefrom.

Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such

shareholder for such damages or other remedy as may be afforded him by law and for court costs and attorneys' fees incurred. It shall be a defense to any action under this section that the person suing therefor has within two (2) years prior to the demand sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used or intends to use any information secured or to be secured through the demanded inspection or any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation, or was not acting and is not acting in good faith or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

Section 47. **Incorporators.** One or more persons of legal age, or a domestic or foreign corporation, may act as incorporator or incorporators of a corporation by signing, acknowledging and delivering in duplicate to the secretary of state articles of incorporation for such corporation.

Incorporators.

Section 48. **Articles of incorporation.** The articles of incorporation shall set forth:

Articles of
incorporation.

- (a) The name of the corporation.
- (b) The period of duration, which may be perpetual.
- (c) The purpose or purposes for which the corporation is organized.

(d) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

(f) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series in so far as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(g) Any provision granting to shareholders the preemptive right to acquire additional or treasury shares of the corporation.

(h) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this act is required or permitted to be set forth in the bylaws.

(i) The address, including street and number, if any, of its initial registered office, and the name of its initial registered agent at such address.

(j) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify.

(k) The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this act.

Section 49. **Filing of articles of incorporation.** Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this act prescribed:

Filing of articles of incorporation.

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of incorporation to which he shall affix the other duplicate original.

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

Section 50. **Effect of issuance of certificate of incorporation.** Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this act, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

Effect of issuance of incorporation.

Section 51. **Organization meeting of directors.** After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three (3) days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

Organization meeting of directors.

Section 52. **Right to amend articles of incorporation.** A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be law-

Right to amend articles of incorporation.

fully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

- (a) To change its corporate name.
- (b) To change its period of duration.
- (c) To change, enlarge or diminish its corporate purposes.
- (d) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.
- (e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
- (f) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.
- (g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued.
- (h) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(i) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(j) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(k) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

(l) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(o) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(p) To grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

Section 53. Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

Procedure to
amend articles
of incorporation.

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this act for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the pro-

posed amendment or such summary may be included in the notice of such annual meeting. If the amendment shall involve an increase of authorized shares, at least thirty (30) days' notice of the meeting for acting upon such amendment shall be given to shareholders entitled to vote at such meeting.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

Class voting on amendments.

Section 54. **Class voting on amendments.** The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations or relative rights of the shares of such class.

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(g) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

(i) Limit or deny existing pre-emptive rights of the shares of such class.

(j) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

Section 55. **Articles of amendment.** The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

Articles of amendment.

(a) The name of the corporation.

(b) The amendment so adopted.

(c) The date of the adoption of the amendment by the shareholders.

(d) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(e) The number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively.

(f) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

(g) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

Filing of articles of amendment.

Section 56. **Filing of articles of amendment.** Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Effect of certificate of amendment.

Section 57. **Effect of certificate of amendment.** Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Restated articles of incorporation.

Section 58. **Restated articles of incorporation.** (1) A corporation may by action taken in the same manner as required for amendment of articles of incorporation adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of

amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this act to be included in original articles of incorporation except that:

(a) The restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation; and

(b) In lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) No statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this act for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto. The secretary of state shall upon request certify a copy of the articles of incorporation, or the articles of incorporation as restated, or any amendments to either thereof.

(3) The restated articles of incorporation, when filed, shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) The name of the corporation.

(b) The date of the adoption of the restated articles of incorporation by the shareholders.

(c) The number of shares outstanding, and the number of shares entitled to vote thereon, and, if the

shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(d) The number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively.

(e) If the restated articles of incorporation provide for an exchange, reclassification or cancellation of issued shares, and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected.

(f) If the restated articles of incorporation effect a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the restated articles of incorporation.

Section 59. **Amendment of articles of incorporation in reorganization proceedings.** Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) Change the corporate name, period of duration or corporate purposes of the corporation;

(b) Repeal, alter or amend the bylaws of the corporation;

(c) Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue;

(d) Change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;

(e) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

Amendment of
articles of
incorporation
in reorganization
proceedings.

(3) Issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

Restriction on redemption or purchase of redeemable shares.

Section 60. Restriction on redemption or purchase of redeemable shares. No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

Cancellation of redeemable shares by redemption or purchase.

Section 61. Cancellation of redeemable shares by redemption or purchase. When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled.

The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement and shall set forth:

(a) The name of the corporation.

(b) The number of redeemable shares cancelled through redemption or purchase, itemized by classes and series.

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(d) The amount, expressed in dollars of the stated capital of the corporation after giving effect of such cancellation.

(e) If the articles of incorporation provide that the cancelled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled.

Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this act.

Section 62. Cancellation of other reacquired shares. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in this section.

Cancellation of other reacquired shares.

The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (a) The name of the corporation.
- (b) The number of reacquired shares cancelled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption.
- (c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.
- (d) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this act prescribed:

- (1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.
- (2) File one of such duplicate originals in his office.
- (3) Return the other duplicate original to the corporation or its representative.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares.

Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this act.

Section 63. Reduction of stated capital in certain cases. A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

A. The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

B. Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this act for the giving of notice of meetings of shareholders.

C. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (a) The name of the corporation.
- (b) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.
- (c) The number of shares outstanding, and the number of shares entitled to vote thereon.
- (d) The number of shares voted for and against such reduction, respectively.
- (e) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this act prescribed:

Reduction of
stated capital in
certain cases.

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

Special provisions
relating to surplus
and reserves.

Section 64. **Special provisions relating to surplus and reserves.** The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be

available for the payment of dividends or other distributions by the corporation except as expressly permitted by this act.

Section 65. **Procedure for merger.** Any two (2) or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this act.

Procedure
for merger.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

(d) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

Section 66. **Procedure for consolidation.** Any two (2) or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this act.

Procedure
for consolidation.

The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this act.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

Approval of
shareholders.

Section 67. Approval of shareholders. The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than thirty (30) days before such meeting, in the manner provided in this act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions

therefor, if any, set forth in the plan of merger or consolidation.

Section 68. Articles of merger or consolidation; merger of subsidiary corporation. Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles and shall set forth:

Articles of merger
or consolidation;
merger of
subsidiary
corporation.

(a) The plan of merger or the plan of consolidation.

(b) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.

(c) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

Any corporation owning at least ninety-five percent (95%) of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either

corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least ninety-five percent (95%) of its shares, which is hereinafter designated as the surviving corporation.

(b) The manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation.

A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

(a) The plan of merger.

(b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof;

(2) File one (1) of such duplicate originals in his office; and

(3) Issue a certificate of merger to which he shall affix the other duplicate original.

The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative.

Section 69. **Effect of merger or consolidation.** Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

Effect of merger or consolidation.

When such merger or consolidation has been effected:

(a) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this act.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceed-

ing pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statement set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this act shall be deemed to be the original articles of incorporation of the new corporation.

Section 70. Merger or consolidation of domestic and foreign corporations. One (1) or more foreign corporations and one (1) or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this act with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(1) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(2) An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(3) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this act with respect to the rights of dissenting shareholders.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise.

At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

Section 71. Sale of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in any such case no authorization or consent of the shareholders shall be required.

Section 72. Sale of assets other than in regular course of business. A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or

Merger or
consolidation
of domestic
and foreign
corporations.

Sale of assets in
regular course
of business and
mortgage or
pledge of assets.

Sale of assets
other than in
regular course
of business.

property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than thirty (30) days before such meeting, in the manner provided in this act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(c) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds ($\frac{2}{3}$) of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds ($\frac{2}{3}$) of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(d) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

Section 73. **Right of shareholders to dissent.** Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(a) Any plan of merger or consolidation to which the corporation is a party; or

(b) Any sale or exchange of all or substantially all of the property and assets of the corporation not made

Right of
shareholders
to dissent.

in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one (1) year after the date of sale.

A shareholder may dissent as to less than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

The provisions of this section shall not apply to the shareholders of the surviving corporation in a merger if such corporation is on the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger, or if a vote of the shareholders of such corporation is not necessary to authorize such merger.

Section 74. **Rights of dissenting shareholders.** Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within ten (10) days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its shareholders into another corporation, any of its shareholders may, within fifteen (15) days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the ten-day period shall be bound by

Rights of
dissenting
shareholders.

the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

No such demand may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section, or if a court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

Within ten (10) days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve (12) months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve (12) months' period ended on the date of such balance sheet.

If within thirty (30) days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefor shall be made within ninety (90) days after the date on which

such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares.

If within such period of thirty (30) days a dissenting shareholder and the corporation do not so agree, then the corporation, within thirty (30) days after receipt of written demand from any dissenting shareholder given within sixty (60) days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty (60) days may, file a petition in the district court in the county in this state where the registered office of the corporation is located praying that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. Each dissenting shareholder shall be served personally or by publication as provided by the Montana Rules of Civil Procedure. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one (1) or more persons as appraiser to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the

vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

Within twenty (20) days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of

as the plan of merger or consolidation may otherwise provide.

Section 75. Voluntary dissolution by incorporators. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time within two (2) years after the date of the issuance of its certificate of incorporation, in the following manner:

Voluntary
dissolution by
incorporators.

A. Articles of dissolution shall be executed in duplicate by a majority of the incorporators and verified by them, and shall set forth:

- (a) The name of the corporation.
- (b) The date of issuance of its certificate of incorporation.
- (c) That none of its shares has been issued.
- (d) That the corporation has not commenced business.
- (e) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
- (f) That no debts of the corporation remain unpaid.
- (g) That a majority of the incorporators elect that the corporation be dissolved.

B. Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this act prescribed:

- (1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.
- (2) File one of such duplicate originals in his office.
- (3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incor-

porators or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease.

Section 76. **Voluntary dissolution by consent of shareholders.** A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one (1) of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the written consent signed by all shareholders of the corporation.
- (e) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

Section 77. **Voluntary dissolution by act of corporation.** A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.
- (2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.

(3) At such a meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds (2/3) of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one (1) of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation.
- (e) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
- (f) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

Section 78. **Filing of statement of intent to dissolve.** Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this act prescribed:

Filing statement
of intent to
dissolve.

Voluntary
dissolution
by consent of
shareholders.

Voluntary
dissolution
by act of
corporation.

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one (1) of such duplicate originals in his office.

(3) Return the other duplicate original to the corporation or its representative.

Effect of
statement of
intent to dissolve.

Section 79. Effect of statement of intent to dissolve. Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except in so far as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this act provided.

Procedure after
filing of
statement of
intent to dissolve.

Section 80. Procedure after filing of statement of intent to dissolve. After the filing by the secretary of state of a statement of intent to dissolve:

(a) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(b) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(c) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated to have the liquidation continued under the supervision of the court as provided in this act.

Revocation of
voluntary
dissolution
proceedings by
consent of
shareholders.

Section 81. Revocation of voluntary dissolution proceedings by consent of shareholders. By the written consent of all of its shareholders, a corporation may, at

any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) The name of the corporation.

(b) The names and respective addresses of its officers.

(c) The names and respective addresses of its directors.

(d) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings.

(e) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

Section 82. Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Revocation of
voluntary
dissolution
proceedings
by act of
corporation.

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this act for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to

revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds (2/3) of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) The names and respective addresses of its officers.
- (c) The names and respective addresses of its directors.
- (d) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings.
- (e) The number of shares outstanding.
- (f) The number of shares voted for and against the resolution, respectively.

Section 83. Filing of statement of revocation of voluntary dissolution proceedings. Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this act prescribed:

- (1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.
- (2) File one of such duplicate originals in his office.
- (3) Return the other duplicate original to the corporation or its representative.

Section 84. Effect of statement of revocation of voluntary dissolution proceedings. Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the

voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

Section 85. Articles of dissolution; tax clearance certificate. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (a) The name of the corporation.
- (b) That the secretary of state has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed.
- (c) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
- (d) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.
- (e) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.
- (f) No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any corporation is terminated, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intra-state business in the state unless the corporation obtains from the state board of equalization and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state board of equalization is satisfied from the available evi-

Articles of dissolution; tax clearance certificate.

Filing of statement of revocation of voluntary dissolution proceedings.

Effect of statement of revocation of voluntary dissolution proceedings.

dence that all taxes imposed by title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

Filing of articles
of dissolution.

Section 86. **Filing of articles of dissolution.** Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of dissolution to which he shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this act.

Involuntary
dissolution.

Section 87. **Involuntary dissolution.** A corporation may be dissolved involuntarily by a decree of the district court in an action filed by the attorney general when it is established that:

(a) The corporation has failed to file its annual report within the time required by this act; or

(b) The corporation procured its certificate of incorporation through fraud; or

(c) The corporation has exceeded or abused the authority conferred upon it by law and that such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the attorney general; or

(d) The corporation has failed for thirty (30) days to appoint and maintain a registered agent in this state; or

(e) The corporation has failed for thirty (30) days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

Section 88. **Notification to attorney general.** The secretary of state, on or before the last day of December of each year, shall certify to the attorney general the names of all corporations which have failed to file their annual reports in accordance with the provisions of this act, together with the facts pertinent thereto. He shall also certify, from time to time, the names of all corporations which have given other cause for dissolution as provided in this act, together with the facts pertinent thereto. Whenever the secretary of state shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the secretary of state shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the state against such corporation for its dissolution. Every such certificate from the secretary of state to the attorney general pertaining to the failure of a corporation to file an annual report shall be taken and received in all courts as prima facie evidence of the facts therein stated. If, before action is filed, the corporation shall file its annual report, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this act, or shall file with the secretary of state the required statement of change of registered office or registered agent, such fact shall be forthwith certified by the secretary of state to the attorney general and he shall not file an action against such corporation for such cause. If, after action is filed, the corporation shall file its annual report or shall appoint or maintain a registered agent as provided in this act, or shall file with the secretary of state the required statement of change of registered office or registered agent, and shall pay the costs of such action, the action for such cause shall abate.

Notification to
attorney general.

Section 89. **Venue and process.** Every action for the involuntary dissolution of a corporation shall be com-

Venue and
process.

menced by the attorney general either in the district court of the county in which the registered office of the corporation is situated, or, if there is no registered office, then in the district court of Lewis and Clark County. Summons shall issue and be served in the manner provided by the Montana Rules of Civil Procedure. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty (30) days after the first publication of such notice.

Jurisdiction
of court to
liquidate assets
and business of
corporation.

Section 90. **Jurisdiction of court to liquidate assets and business of corporation.** The district courts shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

(1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the shareholders are deadlocked in voting power, and have failed for a period which includes at

least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) That the corporate assets are being misapplied or wasted.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent;

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this act, to have its liquidation continued under the supervision of the court.

(d) When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

Proceedings under clause (a), (b) or (c) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

Section 91. **Procedure in liquidation of corporation by court.** In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the

Procedure in
liquidation of
corporation
by court.

court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

Qualifications
of receivers.

Section 92. **Qualifications of receivers.** A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

Filing of claims
in liquidation
proceedings.

Section 93. **Filing of claims in liquidation proceedings.** In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe,

proofs under oath of their respective claims. If the court requires filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

Section 94. **Discontinuance of liquidation proceedings.** The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Discontinuance of
liquidation
proceedings.

Section 95. **Decree of involuntary dissolution.** In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Decree of
involuntary
dissolution.

Section 96. **Filing of decree of dissolution.** In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

Filing of decree
of dissolution.

Section 97. **Deposit with state treasurer of amount due certain shareholders.** Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive

Deposit with
state treasurer
of amount
due certain
shareholders.

portion, shall be reduced to cash and deposited with the state treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto, or shall be disposed of by the state treasurer in the manner provided by law.

Survival of
remedy after
dissolution.

Section 98. **Survival of remedy after dissolution.** The dissolution of a corporation either

(1) by the issuance of a certificate of dissolution by the secretary of state, or

(2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this act, or

(3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within five (5) years after the date of such dissolution.

Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of five (5) years so as to extend its period of duration.

Whenever any such corporation is the owner of real or personal property, or claims any interest or lien whatsoever in any real or personal property, such corporation shall continue to exist during such five-year period for the purpose of conveying, transferring and releasing such real or personal property or interest or lien therein, and such corporation shall continue after the expiration of such five-year period to exist as a body corporate for the purpose of being made a party to, and being sued in any action, suit or proceeding against it involving the title to any such real or personal property or any interest therein, and not otherwise; and any such action, suit or

proceeding may be instituted and maintained against any such corporation as might have been had prior to the expiration of said five-year period. This section shall not be construed as affecting or suspending any statute of limitations applicable to any suit, action or proceeding instituted hereunder.

For the purpose of service of any process, notice or demand within the prescribed time following such dissolution, the secretary of state shall be an agent of the dissolved corporation upon whom service may be made in the manner prescribed in the Montana Rules of Civil Procedure.

Section 99. **Admission of foreign corporation.** No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this act to transact in this state any business which a corporation organized under this act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this act contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Admission of
foreign
corporation.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this act, by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(e) Effecting sales through independent contractors.

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(g) Creating evidences of debt, mortgages or liens on real or personal property.

(h) Securing or collecting debts or enforcing any rights in property securing the same.

(i) Transacting any business in interstate commerce.

(j) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.

Powers of foreign corporation.

Section 100. **Powers of foreign corporation.** A foreign corporation which shall have received a certificate of authority under this act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

Corporate name of foreign corporation.

Section 101. **Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one (1) or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.

(b) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state or a name the exclusive right to which is at the time, reserved in the manner provided in this act, or the name of a corporation which has in effect a registration of its name as provided in this act.

Section 102. **Change of name by foreign corporation.**

Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state.

Section 103. **Application for a certificate of authority.** A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

Application for certificate of authority.

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The date of incorporation and the period of duration of the corporation.

(c) The address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(d) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address.

(e) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.

(f) The names and respective addresses of the directors and officers of the corporation.

(g) A statement of the aggregate number of shares which the corporation has authority to issue, itemized

by classes, par value of shares, shares without par value, and series, if any, within a class.

(h) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(i) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this act.

(j) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

Such application shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

Section 104. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto duly authenticated by manual or facsimile signature by the proper officer of the state or country of incorporation.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such documents the word "filed," and the month, day and year of the filing thereof.

(2) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

Section 105. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this act.

Effect of
certificate
of authority.

Section 106. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

Registered office
and
registered agent
of foreign
corporations.

(a) A registered office which may be, but need not be, the same as its place of business in this state.

(b) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

Section 107. Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

Change of
registered office
or
registered agent
of foreign
corporation.

(a) The name of the corporation.

(b) The address, including street and number, if any, of its then registered office.

(c) If the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed.

(d) The name of its then registered agent.

(e) If its registered agent be changed, the name of its successor registered agent.

(f) That the address, including street and number, if any, of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(g) That such change was authorized by resolution duly adopted by its board of directors.

Filing of
application for
certificate of
authority.

Such statement shall be executed by the corporation by its president or a vice-president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this act, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the secretary of state.

If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (e) or (g) and must recite that a copy of the statement has been mailed to each such corporation.

Service of process
on foreign
corporation.

Section 108. Service of process on foreign corporation. Service of process upon a foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

Amendment
to articles of
incorporation
of foreign
corporation.

Section 109. Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within sixty (60) days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state.

Merger of foreign
corporation
authorized to trans-
act business
in this state.

Section 110. Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state shall

be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within sixty (60) days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

Section 111. Amended certificate of authority. A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

Amended
certificate
of authority.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

Section 112. Withdrawal of foreign corporation. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

Withdrawal
of foreign
corporation.

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) That the corporation is not transacting business in this state.

(c) That the corporation surrenders its authority to transact business in this state.

(d) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(e) A post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

(f) That all taxes imposed on the corporation by title 84 of the Revised Codes of Montana have been paid, supported by a certificate by the state board of equalization to be attached to said application, to the effect that the state board of equalization is satisfied from the available evidence that all taxes imposed by title 84 of the Revised Codes of Montana have been paid. The issuance of such a certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

The application for withdrawal shall be made in a form prescribed by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

Filing of
application for
withdrawal.

Section 113. Filing of application for withdrawal. Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this act, he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed," and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

Section 114. Revocation of certificate of authority. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

Revocation of
certificate
of authority.

(a) The corporation has failed to file its annual report within the time required by this act, or has failed to pay any fees prescribed by this act when they have become due and payable; or

(b) The corporation has failed to appoint and maintain a registered agent in this state as required by this act; or

(c) The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this act; or

(d) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this act; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this act.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless

(1) he shall have given the corporation not less than sixty (60) days' notice thereof by mail addressed to its registered office in this state, and

(2) the corporation shall fail prior to revocation to file such annual report, or pay such fees, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

Issuance of
certificate
of revocation.

Section 115. **Issuance of certificate of revocation.** Upon revoking any such certificate of authority, the secretary of state shall:

- (1) Issue a certificate of revocation in duplicate.
- (2) File one of such certificates in his office.
- (3) Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

Application to
corporations
heretofore
authorized to
transact business
in this state.

Section 116. **Application to corporations heretofore authorized to transact business in this state.** Foreign corporations which are duly authorized to transact business in this state at the time this act takes effect, for a purpose or purposes for which a corporation might secure such authority under this act, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this act, and from the time this act takes effect such corporations shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this act.

Transacting
business without
certificate of
authority.

Section 117. **Transacting business without certificate of authority.** No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court in this state, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall

not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this act upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this act and thereafter filed all reports required by this act, plus all penalties imposed by this act for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

Section 118. **Annual report of domestic and foreign corporations.** Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by this act an annual report setting forth:

Annual report of
domestic and
foreign
corporations.

(a) The name of the corporation and the state or country under the laws of which it is incorporated.

(b) The address of the registered office of the corporation in this state, and the name of its registered agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated.

(c) A brief statement of the character of the business in which the corporation is actually engaged in this state.

(d) The names and respective addresses, including street and number, if any, of the directors and officers of the corporation.

(e) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(f) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(g) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this act.

(h) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ended on the thirty-first day of December preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve (12) months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve (12) months, the statement with respect to business transacted shall be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subparagraph need not be set forth in such report.

Such annual report shall be in a form prescribed by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subparagraph (g) which shall be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report. It shall be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, and verified by the officer executing the report, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

Section 119. Filing of annual report of domestic and foreign corporations. Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the first day of March such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this act and returned to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state.

Filing of annual report of domestic and foreign corporations.

Section 120. Fees and charges to be collected by secretary of state. The secretary of state shall charge and collect in accordance with the provisions of this act:

Fees and charges to be collected by secretary of state.

- (a) Fees for filing documents and issuing certificates.
- (b) Miscellaneous charges.
- (c) License fees.

Section 121. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

Fees for filing documents and issuing certificates.

- (a) Filing articles of incorporation and issuing a certificate of incorporation, twenty dollars (\$20).
- (b) Filing articles of amendment and issuing a certificate of amendment, twenty dollars (\$20).
- (c) Filing restated articles of incorporation, twenty dollars (\$20).

(d) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty dollars (\$20).

(e) Filing an application to reserve a corporate name, two dollars (\$2).

(f) Filing a notice of transfer of a reserved corporate name, two dollars (\$2).

(g) Filing a statement of change of address of registered office or change of registered agent, or both, two dollars (\$2).

(h) Filing a statement of the establishment of a series of shares, five dollars (\$5).

(i) Filing a statement of cancellation of shares, five dollars (\$5).

(j) Filing a statement of reduction of stated capital, five dollars (\$5).

(k) Filing a statement of intent to dissolve, two dollars (\$2).

(l) Filing a statement of revocation of voluntary dissolution proceedings, two dollars (\$2).

(m) Filing articles of dissolution, five dollars (\$5).

(n) Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, twenty dollars (\$20).

(o) Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, twenty dollars (\$20).

(p) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ten dollars (\$10).

(q) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, twenty dollars (\$20).

(r) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, five dollars (\$5).

(s) Filing an annual report, five dollars (\$5).

(t) Filing any other statement or report, except an annual report, of a domestic or foreign corporation, two dollars (\$2).

Section 122. **Miscellaneous charges.** The secretary of state shall charge and collect:

Miscellaneous charges.

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, thirty-five cents (\$.35) per page and two dollars (\$2) for the certificate and affixing the seal thereto.

(b) For furnishing any certificate not mentioned in this or the preceding section, five dollars (\$5).

Section 123. **License fees payable by domestic corporations.** The secretary of state shall charge and collect from each domestic corporation license fees, based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have authority to issue, at the time of:

License fees payable by domestic corporations.

(a) Filing articles of incorporation.

(b) Filing articles of amendment increasing the number of authorized shares; and

(c) Filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be at the rate of ten cents (\$.10) per share up to and including the first one thousand (1,000) authorized shares, eight cents (\$.08) per share for each authorized share in excess of one thousand (1,000) shares up to and including twenty-five hundred (2,500) shares, six cents (\$.06) per share for each authorized share in excess of twenty-five hundred (2,500) shares up to and including five thousand (5,000) shares, four cents

(\$0.04) per share for each authorized share in excess of five thousand (5,000) shares up to and including ten thousand (10,000) shares, and two cents (\$.02) per share for each authorized share in excess of ten thousand (10,000) shares. For the sole purpose of computing the license fee

(a) with respect to shares having a par value, each one hundred dollar (\$100) unit of the authorized share shall be counted as one (1) taxable share;

(b) with respect to shares without nominal or par value, such shares shall be deemed equivalent to share having a par value of one dollar (\$1) each; provided however, that such license fee shall in no event be less than fifty dollars (\$50).

The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

Section 124. **License fees payable by foreign corporation.** The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of fifty dollars (\$50) as an initial license fee.

Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(1) He shall first ascertain the license fee which newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares having a par value of one hundred dollars (\$100) per share, in an amount equal to the stated capital of the reporting foreign corporation shown by its filed annual report;

(2) Said amount shall be multiplied by a fraction the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all its property wherever located and the gross receipts of the corporation derived from its business wherever transacted.

acted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report;

(3) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation, and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within thirty (30) days after the mailing of the notice. Failure to pay such additional license fee within said thirty-day period shall render such corporation liable to the secretary of state for a penalty equal to ten percent (10%) of the amount of the additional license fee, together with interest, at the rate of one-half of one percent ($\frac{1}{2}$ of 1%) per month on the fee plus penalty until paid.

Foreign corporations which entered Montana for the transaction of business prior to the effective date of this act shall be entitled to employ within this state an amount of stated capital equal to the greatest amount employed in the state during the period of their qualification prior to such effective date without the payment of additional fees hereunder.

Section 125. **Penalties imposed upon corporations.** Each corporation, domestic or foreign, that has failed to file its annual report within the time required by this act and fails or refuses to file its annual report within thirty (30) days after the secretary of state has mailed to the corporation at its registered office a demand that such report be filed, shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars (\$500).

Section 126. **Penalties imposed upon officers and directors.** Each officer and director of a corporation, domestic or foreign, who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be

Penalties imposed upon corporations.

Penalties imposed upon officers and directors.

License fee payable by foreign corporation.

guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars (\$500).

Powers of
secretary of state.

Section 127. **Powers of secretary of state.** The secretary of state shall have the power and authority reasonably necessary to enable him to administer this act efficiently and to perform the duties therein imposed upon him.

Secretary of state
to notify
corporation
of expiration
of existence.

Section 128. **Secretary of state to notify corporation of expiration of existence.** It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than three (3) months, nor more than six (6) months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

Appeal from
secretary of state.

Section 129. **Appeal from secretary of state.** If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this act to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten (10) days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated, or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of this act, such foreign corporation may likewise appeal to the district

court of the county where the registered office of such corporation in this state is situated, or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

Section 130. **Certificates and certified copies to be received in evidence.** All certificates issued by the secretary of state in accordance with the provisions of this act, and all copies of documents filed in his office in accordance with the provisions of this act when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations, which would appear from the presence or absence of documents filed in his office, or the compliance or non-compliance with the provisions of this act, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

Certificates and
certified copies
to be received
in evidence.

Section 131. **Forms to be prescribed by secretary of state.** All reports required by this act to be filed in the office of the secretary of state shall be made in a form which shall be prescribed by the secretary of state.

Forms to be
prescribed by
secretary of state.

Section 132. **Greater voting requirements.** Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this act with respect to such action, the provisions of the articles of incorporation shall control.

Greater voting
requirements.

Section 133. **Waiver of notice.** Whenever any notice is required to be given to any shareholder or director of

Waiver of notice.

a corporation under the provisions of this act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Action by
shareholders or
directors without
a meeting.

Section 134. Action by shareholders or directors without a meeting. Any action required by this act to be taken at a meeting of the shareholders or directors of a corporation, or any action which may be taken at a meeting of the shareholders or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders or directors entitled to vote with respect to the subject matter thereof.

Such consent shall have the same effect as a unanimous vote and may be stated in any articles or documents filed with the secretary of state under this act.

Unauthorized
assumption of
corporate powers.

Section 135. Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

Application
to existing
corporations.

Section 136. Application to existing corporations. From and after July 1, 1967, all foreign and domestic corporations are governed by the provisions of this act with the following exceptions:

a. All domestic corporations existing before July 1, 1967, are not subject to the provisions of this act until after January 1, 1969, but such corporations may elect to become subject to its provisions by adoption of a resolution of the board of directors and filing a copy thereof with the secretary of state at any time;

b. All foreign corporations duly authorized to conduct affairs in this state before July 1, 1967, are not subject to the provisions of this act until after January 1, 1969, but such corporations may elect to become subject to its

provisions by adoption of a resolution of its board of directors and filing a copy thereof with the secretary of state at any time;

c. The existing provisions of title 15 of the Revised Codes of Montana remain in effect until January 1, 1969, as to existing corporations which do not elect to become subject to the provisions of this act, but are inapplicable otherwise. After January 1, 1969, the existing provisions of title 15 that are expressly repealed by this act as to newly formed corporations or existing corporations electing to become subject to the provisions of this act are repealed completely and this act shall be construed as replacing such designated sections of title 15.

Existing corporations for profit, which are organized and existing under the laws of this state at the time this act takes effect and which elect to become subject to its provisions as provided herein shall continue in existence with all the rights and privileges applicable to corporations organized under this act, and from the date of such election, shall have all the rights and privileges and shall be subject to all the limitations, restrictions, liabilities and duties prescribed herein except as provided in this section. After January 1, 1969, all existing corporations for profit shall have all such rights and privileges and be subject to all such limitations, restrictions, liabilities and duties prescribed herein.

Existing corporations whose original or amended articles of incorporation do not deny or limit to the present or future shareholders of any or all classes of stock any preemptive or preferential right to subscribe to any or all additional issues of stock of any or all classes, or bonds, debentures, or other obligations convertible into stock, shall continue to be subject to such preemptive or preferential right of their present or future shareholders, unless and until the articles of incorporation are amended to deny or limit such rights.

On or before March 1, 1968, and annually thereafter as provided in section 119 every existing corporation, including foreign corporations qualified to do business in this state at the time this act takes effect, shall file an annual report with the secretary of state setting forth the information prescribed by section 118. The designation of the registered office of the corporation in this

state and the address thereof and the designation of its resident agent in this state at such address contained in the first annual report of the corporation shall be in lieu of designating such office and agent in the articles of incorporation of such corporation, and such designation shall continue until changed as provided in section 12.

Any certificates of stock issued by existing corporations after the effective date of this act shall conform to the requirements of section 21.

The provisions of this act are applicable to every corporation unless a special provision is made in relation thereto, inconsistent with some provision of this act, in which case the special provision prevails.

Nothing contained in the Montana Business Corporation Act shall be construed to repeal or to amend the present statutes relating to banks and trust companies, insurance, casualty and surety companies, cooperative associations, industrial loan companies, credit unions, building and savings and loan associations, non-profit corporations and other corporations for which special regulations different from the general private business corporation laws of this state have existed prior to July 1, 1967.

The stock of any corporation organized prior to July 1, 1967, under the laws of this state shall not be assessable for any purpose whatever, except to such extent and in such manner as may be expressly provided by statute; provided, that if such stock is made assessable and the manner of levying the assessment is not provided for, it shall be levied in the manner and form hereinafter prescribed by this act. The stock of any corporation for profit organized under the laws of this state after June 30, 1967, shall not be assessable for any purpose except as expressly provided by statute and except that water companies, water users associations, irrigation companies, canal companies, ditch companies and reservoir companies, whose articles of incorporation provide for the assessment of shares may levy assessments at the times and in the amounts as may be prescribed by its articles of incorporation, or if not so prescribed, then as follows:

(1) **Limitation upon amount of assessment.** No one assessment must exceed ten percent (10%) of the amount

Limitation upon
amount of
assessment.

of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

(2) **Levy of assessment—unpaid assessment.** No assessment must be levied while any portion of a previous one remains unpaid, unless:

Levy of
assessment—
unpaid assessment.

(a) The power of the corporation has been exercised in accordance with the provisions of this section for the purpose of collecting such previous assessment;

(b) The collection of the previous assessment has been enjoined; or,

(c) The assessment falls within the provisions of the preceding section.

(3) **Contents of order for assessment.** Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than thirty (30) nor more than sixty (60) days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen (15) nor more than sixty (60) days from the day the stock is declared delinquent.

Contents of order
for assessment.

(4) **Notice of assessment—form.** Upon the making of the order the secretary shall cause to be published a notice thereof in the following form: (Name of corporation in full. Location of the principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

Notice of
assessment—
form.

(Signature of secretary, with location of office.)

**Publication and
service of notice.**

(5) **Publication and service of notice.** The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent within ten (10) days after the assessment through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four (4) successive weeks, in some newspaper of general circulation and devoted to the publication of general news, at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

**Delinquent
notice—form.**

(6) **Delinquent notice—form.** If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form: (Name in full. Location of principal place of business.) Notice. There is delinquent upon the following subscribed stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts.) And in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

**Contents of
notice.**

(7) **Contents of notice.** The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

How published.

(8) **How published.** The notice, when published in a daily paper, must be published for ten (10) days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for two (2) weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen (15) days prior to the day of sale.

**Jurisdiction
acquired by
publication
of notice.**

(9) **Jurisdiction acquired by publication of notice.** By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

**Sale to be at
public auction.**

(10) **Sale to be at public auction.** On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

**Highest bidder
to be the
purchaser.**

(11) **Highest bidder to be the purchaser.** The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

**Corporation
may purchase in
default of bidder.**

(12) **Corporation may purchase in default of bidder.** If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof, at the

amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

Disposition of
stock purchased
by corporation.

(13) **Disposition of stock purchased by corporation.** All purchases of its own stock made by any corporation vest the legal title to the same in the corporation, and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the bylaws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Extension of
time of
delinquent sale.

(14) **Extension of time of delinquent sale.** The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty (30) days, by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Assessment shall
not be
invalidated.

(15) **Assessment shall not be invalidated.** No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same, but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must begin anew.

Action for
recovery of stock
—limitation
thereon.

(16) **Action for recovery of stock—limitation thereon.** No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the

sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six (6) months after such sale was made.

(17) **Proofs of publication and sale.** The publication of notice required by this section must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates, signed by the secretary, and under the seal of the corporation, are prima facie evidence of the contents thereof.

Proofs of
publication
and sale.

(18) **Waiver of sale—action to recover assessment.** On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

Waiver of sale—
action to recover
assessment.

Section 137. **Application to foreign and interstate commerce.** The provisions of this act shall apply to commerce with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the constitution of the United States.

Application to
foreign and
interstate
commerce.

Section 138. **Reservation of power.** The legislative assembly shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this act, and the legislative assembly shall have power to amend, repeal or modify this act at pleasure.

Reservation
of power.

Section 139. **Effect of repeal of prior acts.** The repeal of a prior act by this act shall not affect any right accrued or established, or any liability or penalty incurred,

Effect of repeal
of prior acts.

under the provisions of such act, prior to the repeal thereof.

Effect of
invalidity of part
of this act.

Section 140. **Effect of invalidity of part of this act.** If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional.

Amending clause.

Section 141. Section 25-102, R.C.M. 1947 is amended to read as follows:

Fees of
secretary of state.

"25-102. **Fees of secretary of state.** The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, *except corporate papers*, forty cents (\$.40) per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be seventy-five (\$.75) cents per page or fraction thereof.

2. For affixing certificate and seal, two dollars (\$2).

3. For receiving and recording each official bond, ten dollars (\$10).

4. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon and military commissions excepted), five dollars (\$5).

5. For filing each trade mark, five dollars (\$5); for filing and recording each assignment of a trade mark, five dollars (\$5); and for issuing each certificate of record, five dollars (\$5).

6. For filing and recording miscellaneous papers, records, or other documents, five dollars (\$5).

7. For filing and recording any other paper not otherwise herein provided for, five dollars (\$5). When a copy of any law, resolution or record or other document or paper on file in the office of the secretary of state is presented for comparison and certification, ten cents (\$.10) per folio must be charged and collected for proofreading

the same. That no member of the legislative assembly, or state or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of state, must be paid to the state treasurer at the end of each quarter, as provided in the constitution.

Section 142. Section 93-4401, R.C.M. 1947, is amended to read as follows:

Amending clause.

"93-4401. **Appointment of receiver.** A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

Appointment
of receiver.

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds, thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured;

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

3. After judgment, to carry the judgment into effect;

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

Section 143. **Repeal of prior acts.** Sections 15-101, 15-102, 15-103, 15-104, 15-105, 15-106, 15-107, 15-108, 15-

Repealing clause.

109, 15-110, 15-111, 15-112, 15-113, 15-114, 15-115, 15-116, 15-117, 15-118, 15-121, 15-201, 15-202, 15-203, 15-204, 15-205, 15-206, 15-207, 15-208, 15-209, 15-210, 15-211, 15-212, 15-213, 15-214, 15-215, 15-216, 15-217, 15-218, 15-219, 15-220, 15-221, 15-222, 15-223, 15-224, 15-225, 15-301, 15-302, 15-303, 15-401, 15-402, 15-403, 15-404, 15-405, 15-406, 15-407, 15-408, 15-409, 15-410, 15-411, 15-412, 15-501, 15-502, 15-503, 15-504, 15-505, 15-506, 15-507, 15-508, 15-509, 15-601, 15-602, 15-604, 15-606, 15-607, 15-608, 15-609, 15-610, 15-611, 15-612, 15-613, 15-614, 15-615, 15-616, 15-617, 15-618, 15-619, 15-620, 15-621, 15-622, 15-623, 15-624, 15-625, 15-626, 15-627, 15-701, 15-702, 15-703, 15-704, 15-705, 15-706, 15-707, 15-708, 15-709, 15-710, 15-711, 15-712, 15-713, 15-714, 15-715, 15-716, 15-717, 15-718, 15-719, 15-720, 15-721, 15-801, 15-802, 15-803, 15-804, 15-805, 15-806, 15-807, 15-808, 15-809, 15-810, 15-811, 15-901, 15-902, 15-903, 15-904, 15-905, 15-906, 15-907, 15-908, 15-909, 15-910, 15-911, 15-912, 15-913, 15-1001, 15-1002, 15-1101, 15-1102, 15-1103, 15-1104, 15-1105, 15-1106, 15-1107, 15-1108, 15-1109, 15-1110, 15-1111, 15-1112, 15-1113, 15-1114, 15-1115, 15-1116, 15-1117, 15-1118, 15-1119, 15-1120, 15-1121, 15-1122, 15-1123, 15-1124, 15-1125, 15-1126, 15-1127, 15-1128, 15-1129, 15-1130, 15-1131, 15-1201, 15-1202, 15-1601, 15-1602, 15-1603, 15-1701, 15-1702, 15-1703, 15-1704, 15-1705, 15-1706, 15-1707, 15-1708, 15-1709, 15-1710, 15-1711, 15-1712, 15-1713, 15-1801, 15-1802, 15-1803, 15-1804, 15-1805, 15-1806, 15-1807, 15-1901, 15-1902, 15-1903, 15-1904, 15-1905, 15-1906, 15-1907, 15-1908, 25-103, 25-104, 25-105, 25-106, 25-107, 25-108, 25-109, and 93-4342, R.C.M. 1947, are repealed

Effective
December 31, 1968.

Section 144. This act shall be effective on December 31, 1968.

Approved: March 2, 1967.

CHAPTER 301

An Act for the Codification and General Revision of the Laws of Montana Relating to Religious Corporation Sole; and Repealing Sections 15-1501, 15-1502, 15-1503, 15-1504, 15-1505, 15-1506, 15-1507, R.C.M. 1947; and Providing an Effective Date.

It is the intent of the legislative assembly that this bill be codified as one chapter of title 15, Revised Codes of Montana, 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Short title.** This act shall be known and may be cited as the "Montana Religious Corporation Sole Act."

"Montana
Religious
Corporation
Sole Act."

Section 2. **Applicability.** The provisions of this act shall apply to corporations sole now existing or formed in accordance herewith and the Montana Nonprofit Corporation Act shall apply thereto only when not inconsistent with the provisions of this chapter; foreign corporations sole will likewise be governed by the applicable provisions of the Montana Nonprofit Corporation Act when not inconsistent with the provisions of this chapter.

Applicability.

From and after January 1, 1969, this act shall apply to all domestic corporations and to all foreign corporations conducting or seeking to conduct affairs within this state. Those domestic corporations existing at the time that this act becomes effective which have not meanwhile adopted this act, by complying with the provisions of this act, shall, on January 1, 1969, be deemed to have elected to adopt this act by not voluntarily dissolving.

Section 3. **When corporation sole may be created.** Whenever the rules, regulations or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities and business thereof to be held in the name of or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest or presiding elder of such religious denomination, society, or church to become a corporation sole in the manner herein prescribed.

When corporation
sole may be
created.

Section 4. **Articles of incorporation.** The articles of incorporation shall set forth:

Articles of
incorporation
to set forth.

- (a) The name of the corporation.
- (b) The period of duration, which may be perpetual.
- (c) The name of the religious denomination, society or church creating the corporation sole.
- (d) The name of the bishop, chief priest or presiding elder whose office is incorporated under this act, together with a designation of the boundaries of the territory over which he presides, or over which his jurisdiction extends, and the facts authorizing such incorporation.